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Missing persons

Report of the Secretary-General

Summary

In its resolution 67/177 on missing persons, the General Assembly requested the Secretary-General to submit to the Human Rights Council at its relevant session and to the Assembly at its sixty-ninth session a comprehensive report on the implementation of the resolution, including relevant recommendations. The present report is submitted pursuant to that request.

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I. Introduction

1. In its resolution 67/177 on missing persons, the General Assembly requested the Secretary-General to submit to the Human Rights Council at its relevant session and to the Assembly at its sixty-ninth session a comprehensive report on the implementation of the resolution, including relevant recommendations. The present report has been prepared in accordance with that resolution and follows the previous report of the Secretary-General on missing persons (A/67/267).

2. The report outlines measures relating to (a) the prevention of persons from going missing; (b) mechanisms to clarify the fate and whereabouts of missing persons; (c) children; (d) the criminal investigation and prosecution of cases of missing persons; (e) forensic recovery and identification of remains of missing persons; and (f) the legal status of missing persons and support for their families. It ends with a number of conclusions and recommendations. The report has benefited from the contributions received from Member States, intergovernmental organizations and non-governmental organizations in response to a note verbale dated 28 March 2014 addressed to them by the Office of the United Nations High Commissioner for Human Rights (OHCHR).[1]

3. In resolution 67/177, the General Assembly focuses primarily on the specific issue of missing persons in connection with international or non-international armed conflicts. However, persons can also go missing in other contexts, including in situations of violence, insecurity, organized crime, natural disaster or migration. Initiatives taken to address the issue of persons who are unaccounted for are not necessarily defined by the cause or context of their disappearance. Therefore, the present report also reflects information received from States, intergovernmental and other organizations regarding measures to address the issue of persons who are unaccounted for in contexts other than armed conflict, to the extent that they can be relevant for this latter category.

II. International legal framework

4. In his previous report on missing persons, the Secretary-General sets out the international legal framework applicable to the issue of missing persons, referring to international human rights law and international humanitarian law (see A/67/267, paras. 4-7). That report also lays out how the right to the truth underpins the obligations of States to determine the fate and whereabouts of persons who are unaccounted for. In his annual report to the Human Rights Council, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, further articulated the right to the truth. He noted that, in the aftermath of repression or conflict, that right should be understood "to require States

[1] Contributions were received from Algeria, Croatia, Ecuador, Egypt, Kuwait, Paraguay, Switzerland, Tunisia, the International Committee of the Red Cross, the International Commission on Missing Persons, the United Nations Office on Drugs and Crime (UNODC), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the World Food Programme (WFP). UNODC and WFP stated that they had no relevant information to contribute. The submission of UNRWA focused on missing humanitarian and United Nations workers, in particular in the Syrian Arab Republic. The issue of missing humanitarian and United Nations personnel is covered in the report of the Secretary-General on safety and security of humanitarian personnel and United Nations personnel (A/68/489).

to establish institutions, mechanisms and procedures that are enabled to lead to the revelation of the truth, which is seen as a process to seek information and facts about what has actually taken place, to contribute to the fight against impunity, to the reinstatement of the rule of law, and ultimately to reconciliation" (see A/HRC/24/42, para. 20).

5. The international legal framework also includes the International Convention for the Protection of All Persons from Enforced Disappearance. As at 1 July 2014, there were 42 States parties to the Convention. Since the previous report of the Secretary-General, eight States have acceded to or ratified the Convention. The Secretary-General has reported on an annual basis to the General Assembly on the status of the Convention (see A/67/271 and A/68/210). Those reports provide an overview of the activities of the Convention's monitoring mechanism, the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances, as well as the activities of the Secretary-General, OHCHR, United Nations agencies and organizations and intergovernmental and non-governmental organizations in relation to enforced disappearances.

6. In October 2013, the International Commission on Missing Persons organized a conference entitled "The missing: an agenda for the future". In the conference report,[2] the Commission recommends that the international community recognize the global scale of the problem of missing persons and that an international mechanism and standing capacity to deal with the missing be established to address persons missing from conflict, human rights violations, organized violence, migration or any other causes. It also proposes an international declaration on the role of States in addressing the issue of persons missing as a consequence of armed conflict and human rights violations.

III. Measures to prevent persons from going missing

7. In resolution 67/177, the General Assembly stresses the importance of measures to prevent persons from going missing in connection with armed conflict, which may include enacting national legislation, producing and providing proper means of identification, establishing information bureaux, grave registration services and registers of deaths, and ensuring accountability in cases of missing persons. As noted in the previous report of the Secretary-General, preventive measures should ideally be adopted in peacetime to ensure they are in place before they may be required (see A/67/267, para. 8).

A. Enacting national legislation

8. It is critical that in dealing with the issue of missing persons, States develop a national legal framework that incorporates their obligations under international humanitarian law and international human rights law. This is important both from a preventive and a reactive perspective as it can help to ascertain the fate of missing persons, ensure the comprehensive collection and proper management of information and realize the right to the truth of victims' families and provide them with necessary support.

[2] Available from http://www.ic-mp.org/wp-content/uploads/2014/07/conferencereporteng.pdf.

9. The International Committee of the Red Cross (ICRC) reported that it has continued to work with a number of States on draft legislation on issues relating to the missing persons, including in Armenia, Bolivia (Plurinational State of), Guatemala, Lebanon and Peru. It has also continued to conduct and support studies on the compatibility of domestic law with international humanitarian law as it affects the issue of missing persons. In addition to those countries listed in the previous report (see A/67/267, para. 11), such studies have been carried out or are ongoing in Armenia, Azerbaijan, Georgia, Côte d'Ivoire and the Republic of Moldova. Moreover, following the thirty-first International Conference of the Red Cross and Red Crescent, held in 2011, 31 States have officially pledged to implement measures aiming at guaranteeing and protecting the rights of missing persons and their families. Those States are Argentina, Australia, Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Guatemala, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland.

10. At the regional level, the General Assembly of the Organization of American States (OAS) has adopted on a yearly basis since 2005 a resolution on persons who have disappeared and assistance to members of their families. The 2013 resolution, inter alia, encourages OAS member States to adopt the necessary domestic legal framework to recognize and address the legal and practical difficulty and hardship faced by the missing person and his or her family members, including the legal framework needed to authorize a "declaration of absence" for persons who are presumed to have disappeared. The resolution also invites OAS member States to enact timely provisions that ensure the participation and representation of victims and their families in relevant proceedings, as well as access to justice and to mechanisms for them to be able to seek fair, prompt and effective reparation, as well as provisions that guarantee protection for victims and witnesses. Following that invitation in January 2014, Argentina, Colombia, Chile, Peru and Uruguay have submitted detailed reports describing the measures they have taken to implement the resolution.[3]

11. In Mexico, a law was passed in April 2012 to establish and regulate a national registry for information on missing or disappeared persons. The registry is to collect and organize information in an electronic database regarding missing and disappeared persons. The law will become fully operational once its regulation is published. In February 2013, a general law on victims came into force in Mexico (amended in May 2013), which aims to recognize and guarantee the rights of victims of crime and human rights violations, particularly with regard to assistance, protection, care, truth, justice and reparation. In its submission, Ecuador noted that its Judiciary Council issued a standard operating procedure on the search for, investigation into and location of disappeared, lost or missing persons, which explains the procedures that need to be followed by the Ecuadorian National Police, the Office of the Prosecutor, judges and others for the immediate handling of cases involving disappeared, lost or missing persons.

[3] Available from www.oas.org/consejo/cajp/human%20rights.asp#Persons Who Have Disappeared.

B. Other preventive measures

12. In time of armed conflict, the production and proper use of means of identification by armed and security forces play an important role in terms of preventing persons from going missing. States have the primary responsibility for the production and compulsory use by their armed forces of such items as identification tags. For example, the defence forces of Kenya and the United Republic of Tanzania issue identification discs to all officers going on military operations. Their officers also carry their military identification cards. In Bangladesh, each member of the Defence Force has two identification metal discs, and all personnel going on peacekeeping missions are required to provide a blood sample before deployment. In the United States of America and in Canada, the armed forces use extensive means to ensure the identification of their personnel, including identification discs, fingerprints kept in a databank, blood samples of all personnel in a DNA databank, identification cards and dental records.

13. International humanitarian law requires the establishment of national information bureaux and grave registration services. Examples of national information bureaux can be found in Armenia, Azerbaijan, Iran (Islamic Republic of), Iraq and the United Kingdom. In its submission, Croatia noted that its authorities have ensured the possibility of joint searches and marking of possible graves, exhumation, and identification of the remains of persons from Serbia and Bosnia and Herzegovina killed in Croatia.

IV. Measures to clarify the fate and whereabouts of missing persons

14. In resolution 67/177, the General Assembly reaffirmed the right of families to know the fate of their relatives reported missing in connection with armed conflicts, and called upon all States that are parties to an armed conflict to take all necessary measures, in a timely manner, to determine the identity and fate of persons reported missing. To the greatest extent possible, States should provide the family members of missing persons with all relevant information, including the person's whereabouts or, if they are dead, the circumstances and causes of their deaths. In addition to the ratification and implementation of relevant international and regional legal instruments, such measures include tracing activities, coordination mechanisms, national institutions, truth-seeking mechanisms and archives.

A. Tracing and restoration of family links

15. ICRC continued to conduct extensive tracing activities, including the collection of information about persons unaccounted for and the circumstances under which they disappeared. The work involves maintaining a constant dialogue and making confidential representations to the relevant authorities or armed groups to determine the whereabouts of missing persons, provided that families of missing persons have requested and/or agreed to the intervention of ICRC on their behalf.

16. ICRC and national Red Cross and Red Crescent societies assist with the maintenance and restoration of links between family members during conflict. That work involves tracing relatives, exchanging family messages, reuniting families and

seeking to clarify the fate of those who remain missing. ICRC has expanded the scope of its work in relation to the restoration of family links to persons separated as a consequence of migration, in recognition of their particular vulnerability in that regard. Other organizations also continue to be involved in the tracing and restoration of family links activities, including the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration. Agencies such as the United Nations Children's Fund and non-governmental organizations continue to cooperate with the International Red Cross and Red Crescent Movement in, for example, assisting unaccompanied children.

B. Coordination mechanisms

17. Former parties to a conflict may agree to take specific measures under the auspices of a neutral actor. Such measures include setting up coordination mechanisms to exchange information; providing mutual assistance in locating and identifying missing persons and in the recovery, identification and return of human remains; and keeping family members informed about progress in determining the fate and whereabouts of missing persons.

18. The Committee on Missing Persons in Cyprus, which is composed of a Greek Cypriot member, a Turkish Cypriot member and a member from the United Nations, continued its forensic recovery and identification activities, with advice from ICRC and technical assistance from the Argentine Forensic Anthropology Team, a non-governmental organization. By the end of June 2014, the Committee had investigated 887 burial sites across the island and exhumed the remains of 1,092 missing persons. Of those exhumed, 521 had been identified and returned to their families.

19. In Kosovo,[4] the Working Group on Missing Persons, chaired by ICRC and bringing together representatives of the authorities in Belgrade and Pristina, continued its complex work to account for missing persons. According to information received from ICRC, out of the 4,315 cases that had been closed as at April 2014, persons were located alive in 1,372 cases. It is estimated that the number of persons still unaccounted for stands at 1,712.

20. The tripartite coordination mechanism set up by the authorities of Georgia and the Russian Federation, and the de facto authorities in South Ossetia, to exchange information and clarify the fate of persons unaccounted for during and after the August 2008 hostilities, met eight times between February 2010 and November 2013. A similar mechanism in relation to the 1992-1993 Georgia-Abkhazia conflict, established at the end of 2010, met for the fourth time in December 2013, while its forensic working group has met six times. The dialogue led to the exhumation of 64 sets of human remains in 2013. In 2014, exhumations were planned in three additional sites, reportedly containing over 60 sets of human remains. As the identification process progresses, families have started to receive answers regarding the fate of their missing relatives.

21. The Independent Commission for the Location of Victims' Remains, established in 1999 by an intergovernmental agreement between the Republic of

[4] Reference to Kosovo should be understood in full compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

Ireland and the United Kingdom, has a mandate to obtain information that may lead to the location of the remains of those killed and buried in secret by illegal organizations prior to 10 April 1998, as a result of the conflict in Northern Ireland. As at June 2014, nine bodies had been recovered (out of 16 persons who disappeared).

22. In the Middle East, the ICRC-chaired Tripartite Commission, which was established in 1991 to resolve the fate of missing persons in connection with the 1990-1991 Gulf War, regularly meets and works on gravesites and on the identification of human remains. So far, the Commission has resolved 316 cases of missing persons and 149 human remains have been repatriated from Kuwait to Iraq. Excavations have continued to take place in Iraq in order to locate the remains of Kuwaiti missing persons. At its thirty-eighth session, held in January 2014, the Tripartite Commission decided to further strengthen the process of localizing possible burial sites. Concrete steps were also taken by the authorities of both Iran (Islamic Republic of) and Iraq to implement the joint memorandum of understanding signed by both Governments in 2008 in relation to the 1980-1988 war between the two countries. Between January 2011 and March 2014, the remains of 916 Iranian and Iraqi soldiers who had gone missing during the war were recovered in Al-Faw Peninsula. As at April 2014, 275 sets of human remains had been repatriated from Iran (Islamic Republic of) to Iraq, and 641 from Iraq to Iran (Islamic Republic of). The national authorities of Iran (Islamic Republic of) and Iraq have reaffirmed their commitment to carry out more missions of similar nature in the future.

C. National institutions

23. National institutions, such as national commissions on missing persons, can play a crucial role in clarifying the fate of missing persons without discrimination and providing support to the families of the missing. Such mechanisms exist, inter alia, in Argentina, Armenia, Azerbaijan, Bosnia and Herzegovina, Colombia, Chile, Croatia, El Salvador, Georgia, Iran (Islamic Republic of), Iraq, Kosovo,[5] Libya, Panama and Serbia. Work is under way in Lebanon to establish such a mechanism.

24. In Bosnia and Herzegovina, the Missing Persons Institute was established in 2005, on the basis of an agreement between the Government and the International Commission on Missing Persons. The Institute is to address all aspects related to the issue of missing persons resulting from the conflict in the former Yugoslavia. It ensures that mass grave sites are protected, catalogued and properly excavated and that relatives of the missing are able to participate in the search process. It is also to keep a unified central record of those who went missing during the conflict. Through international assistance, over 19,496 persons had been identified in the western Balkans by March 2014, of which over 14,000 related to Bosnia and Herzegovina. By 2014, Bosnia and Herzegovina had accounted for two thirds of those missing in connection with the armed conflict, while 7,526 persons are still unaccounted for. In its submission, the International Commission on Missing Persons reported that, in Bosnia and Herzegovina, 74 per cent of those who went

[5] Reference to Kosovo should be understood in full compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

missing had been accounted for by April 2014 (over 70 per cent in the wider region of the former Yugoslavia).

25. Croatia reported in its response that the Commission for Detained and Missing Persons acts as an expert, interdepartmental and advisory body, and the Bureau for Detainees and Missing Persons of the Ministry of Veterans' Affairs performs expert and administrative work regarding the search for missing persons. Through the work of these bodies, and in cooperation with international organizations, most cases of missing persons stemming from the war in the 1990s have been solved. As at 9 April 2014, there were 1,656 missing persons unaccounted for. Most missing persons had been found in mass and individual graves. The remains of 4,937 persons had been exhumed, of which 3,960 persons had been identified. Also, in April 2012, Croatia published a third edition of the "Book of missing persons on the territory of the Republic of Croatia" in cooperation with ICRC and the Croatian Red Cross. The book is used as a tool in the tracing process and as a trigger for the wider public to provide any additional information it might possess that could contribute to elucidating the fate of missing persons and locating their whereabouts.

26. In Colombia, three mechanisms are in charge of coordinating efforts to provide answers to the families of missing persons regarding the fate and whereabouts of their relatives, as well as to provide reparation. The National Commission for the Search of Disappeared Persons is mandated to support and promote investigations into cases of enforced disappearances and coordinate the design and implementation of the national registry of missing persons, the national plan on the search for missing persons and the urgent search mechanism. Victims of enforced disappearance can obtain reparations through the National Unit for Comprehensive Attention and Reparation to the Victims. The National Centre of Historical Memory collects and recovers all documents, oral testimony and other evidence related to violations established in the Victims' Rights and Land Restitution Law. In 2014, the Centre launched its report on enforced disappearances in Colombia.[6] Since 2007, the inter-institutional roundtable on support of victims of enforced disappearances, chaired by OHCHR in Colombia and ICRC, and composed of a number of State agencies, victims, human rights and forensic organizations, have continued to contribute to collective efforts aimed at providing answers to the families of missing persons at the national level. This initiative has been replicated at the regional and local levels.

27. In Libya, the Ministry for the Affairs of Families of Martyrs and Missing Persons was designated in 2011 as the governmental authority in charge of clarifying the fate and whereabouts of missing persons. Its mandate, structure, objectives and working modalities have been partially defined in different laws, for example, Council of Ministers resolution No. 85 of 2012 on caring for and honouring the families of martyrs and missing persons, General National Congress Law 1 (2014) on the care of martyrs and missing persons of the 17 February revolution, and General National Congress Law 31 (2013) on the martyrs of the Abu Salim prison massacre.

28. In Mexico, the Ministry of the Interior signed an agreement with ICRC in February 2013 in order to facilitate the search for missing persons, including the

[6] Available from www.centrodememoriahistorica.gov.co/micrositios/desaparicionForzada/libros-tomo1.html.

establishment of a protocol for the identification of human remains, a national registry of unidentified remains and the formulation of a holistic response by authorities to families' needs. As part of the agreement, a working group on missing persons was created in June 2013. The main objective of the working group is to elaborate measures aiming to prevent disappearances, improve the search mechanisms for missing persons and implement an efficient and effective information management system at the national level that also takes into consideration the regional dimension of the issue. Four subworking groups were created to tackle specific issues, including forensics, information management systems, legal issues and accompaniment and provision of information to families.

29. In Panama, a special national commission aimed at addressing the issues of relatives of missing and murdered persons during the military regime was created in 2011.

30. In Peru, the Ministry of Justice and Human Rights has been engaged in efforts to draft a law on the creation of a general directorate for the search of missing persons, with the capacity to record and centralize information on missing persons and to accompany families and provide them with appropriate assistance. In parallel, the Inter-institutional Platform for the Search of Missing Persons drafted a protocol related to inter-institutional coordination and good practices for the search of missing persons, which has been presented to the Ministry of Justice and Human Rights for consideration and validation.

31. In its submission, Paraguay reported that a national team for the investigation, search and identification of detained, disappeared and executed persons between 1954 and 1989 was created by Presidential Decree 7101/11 of 2011, as amended in 2013. The team is charged with organizing and coordinating a national system for the search and identification of missing persons, as well as compiling and updating information in the register of victims of the past dictatorship. Since its creation, the team has performed several excavations. In 2013, it exhumed 17 sets of remains, of which three have been identified using DNA profiling.

32. Egypt stated in its response that its Ministry of the Interior has established a mechanism to receive inquiries about missing persons in Egypt.

33. Finally, during the ordinary meeting of the Council of Central American and Caribbean Attorneys General and the first meeting of Forensic Service Directors of Central America and Mexico, both held in April 2013, a joint declaration was signed to strengthen coordination mechanisms for the search of missing persons and promote the adoption of protocols for joint action.

D. Truth-seeking mechanisms

34. National and international truth-seeking mechanisms constitute other valuable instruments to address the issue of missing persons or persons who are victim of enforced disappearance, including in the context of transitional justice processes. In his report to the twenty-fourth session of the Human Rights Council, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence called for renewed attention to the victim-tracing function of truth commissions, recalling the significant contribution of earlier truth commissions to this task, and recent advances in forensics (see A/HRC/24/42, para. 102).

35. Tunisia reported in its submission that, in December 2013, it had adopted Organic Law 2013-53 of 24 December 2013, on establishing and organizing transitional justice. In addition to other transitional justice mechanisms, the Law created the Truth and Dignity Commission, formally launched on 9 June 2014. The Commission is mandated to investigate gross human rights violations, including enforced disappearances, that were committed by the State or those who acted in its name and under its protection.

36. In the Plurinational State of Bolivia, the Ministry of Justice, the Office of the Prosecutor and the Universidad Mayor de San Andrés signed an agreement in February 2014 to investigate cases of enforced disappearances that took place between 1964 and 1982.

37. In April 2014, the Parliament of Nepal passed the Act on Investigation of Disappeared Persons, Truth and Reconciliation, 2071 (2014) to create two commissions: the Truth and Reconciliation Commission and the Commission on Investigation of Disappeared Persons, which are tasked to inquire into the killing of thousands of people during the 1996-2006 conflict and the fate of 1,300 persons who are still missing, among other violations.[7]

38. International commissions of inquiry and fact-finding missions have made recommendations to relevant authorities regarding missing or forcibly disappeared persons. For example, in its final report, the commission of inquiry on human rights in the Democratic People's Republic of Korea recommended that the country "clarify with full detail the fate of any disappeared persons who cannot be readily traced" and "provide the families and nations of origin of all persons who have been abducted, or otherwise forcibly disappeared, with full information on their fate and whereabouts, if they have survived; allow those who remain alive, and their descendants, to return immediately to their countries of origin; and, in close cooperation with their families and nations of origin, identify and repatriate the physical remains of those who have died" (see A/HRC/25/63, para. 89). The Independent International Commission of Inquiry on the Syrian Arab Republic recalled that parties to a conflict must take all feasible measures to account for persons reported missing as a result of the conflict and efforts must be made to provide family members with any information they have on their fate (see A/HRC/21/50, annex II, para. 49). Annex IV of the report submitted to the Human Rights Council at its twenty-fifth session also deals specifically with enforced disappearances in Syria (A/HRC/25/65, annex IV).

E. Archives

39. The collection, protection and management of relevant information are essential components for addressing the issue of missing persons. In resolution 67/177, the General Assembly invited States, national institutions and, as

[7] The Office of the United Nations High Commissioner for Human Rights (OHCHR) has raised several concerns with the Act, including that it gives the Commissions the power to recommend amnesties for gross human rights violations or serious violations of international humanitarian law. See OHCHR technical note, available from www.ohchr.org/Documents/Countries/NP/OHCHRTechnical_Note_Nepal_CIDP_TRC_Act2014.pdf. See also the joint Special Procedures statement, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14824&LangID=E.

appropriate, intergovernmental, international and non-governmental organizations to ensure the development and proper management of archives pertaining to missing persons and unidentified remains in connection with armed conflict, as well as access to those archives in accordance with applicable laws and regulations.

40. In its resolution 21/7 on the right to the truth, the Human Rights Council requested OHCHR to invite Member States, United Nations organs, intergovernmental organizations, national human rights institutions and non-governmental organizations to provide information on good practices in the establishment, preservation and provision of access to national archives on human rights, and to make the received information publicly available in an online database. In response to an invitation by OHCHR in April 2013, submissions were received from Argentina, Burkina Faso, Burundi, Germany, Guatemala, Latvia, Lithuania, Mexico, Norway, Paraguay, Poland, the Russian Federation, Serbia, Spain and Ukraine, as well as from the International Commission on Missing Persons, ICRC and the Timor-Leste Post-Commission for Reception, Truth and Reconciliation Technical Secretariat. These contributions were made available on the OHCHR website.[8] OHCHR is also finalizing a rule-of-law tool for post-conflict States on archives.

41. In his report to the twenty-fourth session of the Human Rights Council, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence explained how archives, both those of truth commissions and general national archives, contribute to the realization of the right to the truth. He encouraged, inter alia, truth commissions to adopt in their recommendations policies that maximize access to archives consistent with considerations of privacy and personal safety. He called on States to opt for archiving modalities that maximize access to all stakeholders, in compliance with the rights to privacy and personal security (see A/HRC/24/42, paras. 80-88 and 106). The Special Rapporteur, together with ICRC and Swisspeace, is also planning an expert workshop on archives, to take place in Geneva in September 2014.

42. Croatia reported in its submission that the records of its Directorate for Detainees and Missing Persons, documentation of exhumations and identification of remains are to be stored permanently. While persons outside the Directorate have no access to the archives, they may obtain copies of documents through a reasoned request.

43. In Chile, in February 2014, ICRC, the National Medical Legal Service and two associations representing families of missing persons signed an agreement for ICRC to preserve back-up biological reference samples from families of missing persons for DNA analysis for a (renewable) period of at least 30 years.

[8] http://www.ohchr.org/en/issues/truth/pages/truthIndex.aspx.

V. Children

44. In resolution 67/177, the General Assembly requested States to pay the utmost attention to cases of children reported missing in connection with armed conflicts and to take appropriate measures to search for and identify those children and to reunite them with their families. In its General Comment on children and enforced disappearances, published in 2013, the Working Group on Enforced or Involuntary Disappearances recalled, inter alia, that "States must establish appropriate measures to prevent enforced disappearance of children or their parents in times of armed conflict and take appropriate steps to aid parents in searching for children disappeared during armed conflict or children searching for their parents disappeared during armed conflict" (A/HRC/WGEID/98/1, para. 5).

45. In El Salvador, the National Commission for the Search of Missing Children during the Internal Armed Conflict continued its work to clarify the fate of children whose whereabouts are still unknown.

46. In its submission, Croatia informed that it gives special attention to the search for children who were registered as missing. Croatia reported that most of these cases had been solved and that 10 cases of persons that were children at the time when they went missing remain unresolved.

VI. Criminal investigation and prosecution

47. Cases of missing persons may involve conduct that amounts to criminal offences, while the commission of enforced disappearance is always a crime. Depending on the circumstances, such conduct may also amount to war crimes or crimes against humanity. States have an obligation, clearly established in international law, to investigate and prosecute such conduct. Moreover, criminal investigations and prosecutions can help victims to realize their right to the truth if the findings of such investigations and prosecutions are made available to interested parties. In order to enable effective investigations and prosecutions, violations of relevant standards of international humanitarian and international human rights law should be criminalized under national criminal law, and necessary investigative and judicial mechanisms should be established.

VII. Forensic recovery and identification of remains of missing persons

48. In cases where missing persons are believed to be dead, the recovery, identification and dignified management of their bodies or remains are essential. New methodologies and scientific advances are important in this regard. Forensic science can make a significant contribution to human rights and humanitarian work. In resolution 67/177, the General Assembly recognized that great technological progress has been made in the effective search for, and identification of, missing persons using forensic sciences, including DNA forensic analysis. It invites States, national institutions and, as appropriate, intergovernmental, international and non-governmental organizations to further their engagement in order to follow forensic best practices regarding the prevention and resolution of cases of missing persons in connection with armed conflict.

49. It is of the utmost importance that forensic investigations into the missing are up to international standards, so as to not compromise the results or the credibility of forensic institutions and practitioners involved, or further traumatize families. Updating equipment, providing training and ensuring quality control and assurance to meet the complex nature of these investigations, as well as cooperating with specialized international organizations, are crucial for improving results, maintaining credibility of the concerned institutions and addressing the needs of bereaved families.

50. In its resolution 15/5 on forensic genetics and human rights, the Human Rights Council encouraged States to consider the use of forensic genetics to contribute to the identification of the remains of victims of serious violations of human rights and of international humanitarian law, to address the issue of impunity, and to contribute to the restoration of identity of those persons who were separated from their families, including in the context of armed conflicts and violations of international humanitarian law. The Council, however, also encouraged States to use forensic genetics in conformity with international standards accepted by the scientific community in relation to quality assurance and control, and to ensure, where appropriate, the utmost respect for the principles of protection and confidentiality of information (A/HRC/RES/15/5).

51. Standards related to forensic sciences and human remains in the context of investigations of the missing have been developed by the United Nations, the Council of Europe, the International Criminal Police Organization (INTERPOL), ICRC and competent professional and scientific organizations, such as the European Network of Forensic Science Institutes. Recommendations were also made at the 2003 International Conference of Governmental and Non-Governmental Experts on the Missing and their Families, and at the 2010 Second World Congress on Psychological Work in Exhumation Processes, Forced Disappearance, Justice and Truth. The World Medical Association, in its updated Statement on Forensic Investigations into the Missing, adopted at its sixty-fourth General Assembly, held in Brazil in 2013, called upon national medical associations to help ensure compliance by forensic medical practitioners with the principles enshrined in international humanitarian law for the dignified and proper management, documentation and identification of the dead, and where possible, providing answers to the bereaved. It also called upon all national medical associations to help ensure that, when its members take part in forensic investigations for humanitarian and human rights purposes, such investigations conform to the principles and practices of humanitarian forensic action developed by ICRC.

52. ICRC continues to observe a growing number of forensic institutions and practitioners following the standards and recommendations on forensic best practices as they apply to preventing and resolving cases of missing persons. Several countries have acquired highly specialized forensic services required for such investigations, including in the fields of forensic anthropology and forensic DNA analysis (including in Argentina, Australia, Brazil, Chile, Colombia, Croatia, Cyprus, Georgia, Guatemala, Iran (Islamic Republic of), Iraq, Mexico, Peru, Portugal, Spain, United Kingdom of Great Britain and Northern Ireland, and the United States of America). ICRC has also been assisting and helping to build local

forensic capacity.[9] Such assistance ranges from technical support and advice and tailored training, to the provision of equipment and tools (including databases for the management of information on the missing) and the promotion of communication, coordination and cooperation among forensic services for improved prevention and investigation of the missing from armed conflicts.

53. Between 2005 and 2008, ICRC developed a forensic information management tool, the Ante-Mortem/Post-Mortem Database. The Database manages information about missing persons, as well as the events related to their disappearances, unidentified remains and the sites where they were found. In Mexico, the Attorney-General's office signed an agreement with ICRC in September 2013 for the donation of the Database. Training courses on the collection of data and the use of the Database started in 2014. In October 2013, a new protocol on the treatment and identification of human remains was also distributed at the federal and state levels in Mexico. The Database has also been shared with partners in El Salvador and Guatemala, who have benefited from training programmes, or will do so. More generally, ICRC has provided various training courses to forensic experts in El Salvador, Guatemala, Honduras and Mexico, on the handling of human remains and the interaction with missing persons' family.

54. In Colombia, the implementation continued of a large-scale project to compare fingerprints from data held in the National Civil Registry with autopsy reports on unidentified bodies. Over 10,500 matches have been made through this project, thus enabling the death of these persons to be confirmed and their bodies to be located and returned to families.

55. In Peru, the Medical Legal Institute is designing an optimization plan for the following years aimed at increasing its efficiency in relation to the search of missing persons. The Ministry of Justice and Human Rights allocated funds to the Attorney-General's office for the purchase of items required for DNA profiling and identification of human remains.

56. In Guatemala, the National Reparations Programme has started collecting information about possible gravesites in relation to the past conflict. With ICRC support, non-governmental organization have helped families reunite and hold proper burials for their relatives.

57. In Armenia, as a result of a framework agreement concluded between ICRC and the Commission on Prisoners of War, Hostages and Missing Persons, ante-mortem data has been collected from families of the missing since 2008. In Azerbaijan, ante mortem data from the families of missing persons is also being collected and transmitted to the State Commission on Prisoners of War, Hostages and Missing Persons. In 2014, in cooperation with both State Commissions, a

[9] Including in Afghanistan, Argentina, Armenia, Azerbaijan, Bangladesh, Bolivia, Brazil, Burundi, the Central African Republic, Chile, Colombia, the Congo, Côte d'Ivoire, Cyprus, the Democratic Republic of the Congo, Djibouti, El Salvador, Georgia, Greece, Guatemala, Guinea, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Kosovo,* Jordan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Liberia, Libya, Malta, Mexico, Nepal, Nigeria, Pakistan, Panama, Peru, the Philippines, Spain, Sri Lanka, the Sudan, South Sudan, East Timor, Uganda, the United Kingdom, the United States, Uruguay, Venezuela and Yemen. (*Reference to Kosovo should be understood in full compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.)

process of collection of biological reference samples from the families of missing person has also been initiated, for the purpose of data conservation.

58. In Kyrgyzstan, ICRC supported the Republic Forensic Bureau by providing repair to selected morgues. In parallel, representatives of law enforcement agencies benefited from an ICRC course on management of human remains.

59. In the Russian Federation, the authorities in the Northern Caucasus have undertaken efforts to profile biological reference samples collected from families of missing persons that could enable the identification of human remains.

60. In Iraq, a Mass Graves Department was established in the Ministry of Human Rights, as well as in the Medico-Legal Institute in Baghdad, benefiting from Government-built DNA laboratories.

VIII. Legal status of missing persons and support for families of persons unaccounted for

61. The suffering that families of missing persons endure is often exacerbated by other challenges and difficulties. In resolution 67/177, States were called upon to take appropriate steps with regard to the legal situation of missing persons and the needs and accompaniment of their family members, in such fields as social welfare, psychological and psychosocial support, financial matters, family law and property rights.

A. Understanding the needs of families

62. In cooperation with family associations, national societies of the Red Cross and Red Crescent Movement, non-governmental organizations, and academic and research institutions, ICRC continued to assess the needs of families of missing persons, based on the ICRC guidelines for multidisciplinary family needs assessments. In 2012 and 2013, such assessments were concluded in Lebanon, Senegal and Uganda. In 2014, assessments have continued in Colombia, El Salvador, Guatemala, Honduras, Iraq, Libya, Mexico, Peru and Tajikistan. In some of these locations, the assessment, inter alia, pertains to the needs of families of missing migrants. The aim of the assessments is to ensure a contextualized and comprehensive understanding of the multifaceted needs of families and determine the existing capacity to respond as well as the level of additional assistance needed. When circumstances allow, ICRC publishes a report on those assessments, for example, in Guatemala, Lebanon, Nepal, Senegal and Timor-Leste. ICRC also engages in confidential dialogues with the concerned authorities regarding the identified needs and appropriate recommendations.

B. Addressing the needs of families

63. Families of the missing have many needs, including the need to know what happened; the need for recognition and commemoration; the need for economic, financial, psychological and psychosocial support; the need for protection against security threats; and the need for access to justice. Furthermore, as a result of gaps in legislation and administrative obstacles, families often lack access to social

benefits and pensions and are prevented from exercising their rights under property and family law. The range of needs and multidimensional impact of a missing family member requires a holistic response.

64. Domestic law should first clarify the legal situation of missing persons, including through provisions for the person to be declared absent or missing so that the families of missing persons become eligible to social and financial benefits, without forcing them to declare the missing relative dead. For example, in addition to the countries mentioned in the previous report by the Secretary-General (see A/67/267, para. 70), Law no. 24.321 on the enforced disappearance of persons, adopted in Argentina, includes the declaration of absence for people who involuntarily disappeared prior to 10 December 1983. In Armenia, Kazakhstan and Kyrgyzstan, the Civil Code regulates the recognition of a citizen as missing. In France, Mexico, Peru, Spain, Switzerland and Uruguay, the Civil Code regulates the declaration of absence. In 2012, Colombia also adopted a law to create declarations of absence for victims of enforced disappearance or other forms of involuntary disappearance. In its submission, Algeria stated that its 2006 law on the implementation of the Charter for Peace and National Reconciliation foresees the possibility, under certain conditions, of obtaining a court decision to declare a missing person as deceased, which opens the door for compensation and other forms of assistance for the family.

65. States such as Armenia, Azerbaijan, Kyrgyzstan, Nepal and Serbia have considered, either by amending existing domestic legislation or through specific provisional decrees, granting victims, including the families of missing persons, specific social and financial benefits. These include pensions for the families of missing soldiers, reduced health-care and tuition fees, child allowances, food assistance, loans, and interim relief. In Azerbaijan, the policy of insurance payments was extended to families of servicemen who went missing before 1997 and who were not eligible for such payments beforehand, following a 28 January 2014 decision of the Constitutional Court. On 18 March 2014, by decree of the President of Azerbaijan, the children whose parents went missing as a result of military operations, and who were considered deceased by a decision of the Court, were exempt from any costs related to their vocational, undergraduate and graduate education; all related costs would be paid for by the State.

66. In its submission, Croatia reported that it had adopted specific regulations to solve status issues of families of missing persons. The Law on the Rights of Croatian Homeland War Veterans and Their Family Members regulates the rights of families of missing Croatian veterans, while the Law on the Protection of the Military and Civilian War-Disabled regulates the rights of families of missing civilians. A system of psychosocial assistance to families of missing persons was also organized, and projects conducted by organizations of family members of missing persons enjoy State support.

67. In 2013, ICRC published "Accompanying the families of missing persons: A practical handbook",[10] in which it set out its approach to address the needs of families of the missing. The handbook brings together the experience and knowledge gained in different processes over the years, for example, in Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Kosovo, Nepal and Timor-Leste. The

[10] Available from www.icrc.org/eng/resources/documents/publication/p4110.htm.

"accompaniment" approach operates on the premise that families can be helped through empathetic relationships, mutual support and linkages between families and the various persons and organizations that provide the necessary support within the community. Its main goal is to strengthen the abilities of individuals and families to deal with difficulties related to the disappearance of their relatives and to gradually help them reacquire a healthy social life and emotional well-being. Since 2013, an accompaniment programme is being implemented in Uganda, and is being explored in El Salvador, Guatemala, Honduras, Lebanon and Mexico.

IX. Conclusions and recommendations

68. **In its resolution 67/177, the General Assembly focuses primarily on the issue of missing persons in connection with armed conflict. However, persons can go missing in other contexts, including in situations of violence, insecurity, organized crime, disaster or migration. The approaches to deal with the issue of persons who are unaccounted for in these different situations can be similar in many ways. I encourage States to consider such similarities in the design of their responses.**

69. **The International Convention for the Protection of All Persons from Enforced Disappearance is a significant contribution to the applicable legal framework. I continue to strongly encourage all States that have not yet become parties to this instrument to take the necessary measures to do so, to incorporate its provisions into domestic law and to ensure full implementation of those provisions by relevant authorities.**

70. **It is essential that States put in place the appropriate legislative and institutional framework and take all possible measures to prevent persons from going missing and respond effectively to missing persons' cases. States' legal framework should address the legal and practical difficulties that the missing person and their family members experience. States must provide proper means of identification for members of their armed forces; they must also ensure that a means of personal identification is provided for children, in the light of their particular vulnerability. States are encouraged to put in place mechanisms that are capable of collecting, protecting and managing data on missing persons. The establishment of national information bureaux and graves registration services, as provided under international humanitarian law, is recommended.**

71. **In the aftermath of armed conflict, States should actively engage in a process to address cases of missing persons and minimize their impact, including by establishing adequate processes to locate, identify and repatriate the missing to their families. Where appropriate, the issue of missing persons should be considered in the context of peacebuilding and transitional justice processes, also ensuring transparency and public involvement and participation. The issue of children missing in connection with armed conflict still requires greater attention.**

72. **As part of their policies to prevent and resolve missing persons cases, States are encouraged to continue to develop local forensic capacity, in line with applicable forensic best practices and international standards and recommendations. Forensic work may constitute an invaluable element of all investigations into missing persons' cases, including through the identification**

of human remains. Building well-trained, well-resourced and independent forensic capacities is essential for ensuring credible investigations into cases of missing persons. Regional coordination and cooperation among forensic institutions and practitioners should be promoted and supported.

73. **States are encouraged to continue ensuring the preservation of and access to archives concerning human rights violations and violations of international humanitarian law, including by developing policies aimed at the maximization of such access but consistent with considerations of privacy and personal safety.**

74. **Families of persons who are unaccounted for suffer and have many needs. The needs of missing persons and their families should be at the centre of any undertaking by States and other relevant actors, with particular attention to those who are most vulnerable, including women, children and migrants. States are encouraged to take steps to understand the needs of the families of the missing, including through family needs assessments, with the aim to identify concrete difficulties experienced and determine the most appropriate response. National committees for the implementation of international humanitarian law could explore developing domestic legal frameworks to address specific legal and administrative difficulties and needs of the families of missing persons.**

75. **Ensuring accountability for gross human rights violations and serious violations of international humanitarian law is critical, both as a preventative measure and a measure of redress. Cases of missing persons in connection with armed conflict should be investigated effectively, promptly, thoroughly, independently and impartially; prosecutions should be brought where such cases involve criminal offences and are supported by evidence. Truth-seeking mechanisms, commissions of inquiry or fact-finding missions, relevant human rights treaty bodies, and special procedure mandate holders can also contribute to accountability, including through their documentation and examination of cases of missing persons that fall within their respective mandates and through their recommendations to national authorities. I encourage these mechanisms to systematically consider the issue of missing persons in the implementation of their mandates.**

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Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Independence of judges and lawyers

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, submitted in accordance with Human Rights Council resolution 26/7.

* A/69/150.

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Report of the Special Rapporteur on the independence of judges and lawyers

Summary

The present report addresses the need to consider and integrate into the post-2015 development framework the concept of the rule of law, including in particular two of its central elements: access to justice and the independence of the justice system. The report formulates responses to the shortcomings of the Millennium Development Goals, which were based on a narrow economic perspective of development, and highlights the unique opportunity of the international community to better address the intrinsic connection among the rule of law, human rights and development in the post-2015 agenda.

The Special Rapporteur first examines the Millennium Development Goals framework; then discusses the interrelatedness of the rule of law, justice and development; and, finally, presents her arguments for the integration of access to justice and the independence and impartiality of the justice system as elements essential to a successful post-2015 development framework. The report concludes with a series of recommendations.

In her report, the Special Rapporteur expresses her view that the rule of law and development are mutually reinforcing concepts and that the rule of law encompasses the following relevant aspects: the provision of access to fair and responsive justice systems capable of delivering effective remedies in the event of non-compliance with human rights; poverty reduction; transparency; accountability; and sustainability. Access to justice and the independence of the justice system are highlighted as key to breaking the cycle of poverty, exclusion and vulnerability, as well as to enabling populations to claim their human rights and to gain access to effective remedies for rights that have been violated. The Special Rapporteur emphasizes that it is imperative that human rights standards and obligations be mainstreamed throughout the post-2015 agenda.

The Special Rapporteur urges that access to justice and the consolidation of the independence of the justice system be reflected as goals in their own right in the new development framework. Fundamental aspects and elements of access to justice, the independence of the judiciary and the rule of law should also be considered in the development of the measurable targets and indicators that will accompany the new set of development goals.

I. Introduction

1. The present report is submitted in accordance with Human Rights Council resolution 26/7.

2. As momentum is growing for the incorporation of the concepts of the rule of law and access to justice into the post-2015 development framework, the Special Rapporteur decided to contribute to ongoing discussions by sharing her vision in this report — a vision that she has developed throughout her more than five years as a mandate holder.

3. The Millennium Development Goals, established through a constructive and participatory process, represented a unique effort to reduce extreme poverty and set a series of time-bound targets and indicators. However, it is now clear that despite a number of successful achievements, the development framework established by the Millennium Development Goals was too limited conceptually and lacked references to human rights, specifically in relation to important concepts such as justice and the rule of law. In hindsight, one can observe that this development framework was unwisely based on the notion of economic growth, which is too narrow to account fully for the human experience of development.

4. The international community has already started discussing how to address these shortcomings and build on the legacy of the Millennium Development Goals in the new development framework whose implementation should commence after 2015. Both the United Nations and civil society have been particularly involved in organizing a multitude of consultations, expert group meetings and high-level panels for the discussion of various aspects of the post-2015 development agenda. In this context, several Special Rapporteurs have emphasized not only in reports, but also in public statements, the importance of incorporating human rights and a human rights perspective into the post-2015 development framework.

5. Against this backdrop, the Special Rapporteur hopes that the present report will help to underline the importance of a fair, transparent and independent justice system that guarantees equal access to justice for all as a central feature of a more comprehensive development framework. Including access to justice in the post-2015 agenda will represent an important step towards breaking the vicious circle of poverty, exclusion and vulnerability, which impairs the enjoyment of several human rights.[1] Failing to acknowledge the role of the justice system, and the international legal obligations of the State attached thereto, will surely jeopardize the success of the post-2015 development agenda.

6. In the present report, the Special Rapporteur first examines the Millennium Development Goals framework (chap. III, sect. A), before she discusses the fundamental interrelatedness of the rule of law, justice and development (chap. III, sect. B). Finally, she presents her arguments for the integration of access to justice and the independence, impartiality, accountability and competence of the justice system into the post-2015 development framework as central elements (chap. III, sect. C), before concluding and putting forward specific recommendations (chaps. IV and V).

[1] A/67/278, para. 5.

II. Activities of the Special Rapporteur

7. The activities carried out by the Special Rapporteur from the issuance of her previous report to the General Assembly to 27 April 2014 are listed in her most recent report to the Human Rights Council (A/HRC/26/32). Since then, she has participated in the activities set out below.

8. From 27 April to 1 May 2014, the Special Rapporteur attended the sixty-third session of the General Assembly of the Latin American Federation of Judges and the annual meeting of the Ibero-American Group of the International Association of Judges, held in Santo Domingo. On that occasion, she delivered a statement on the current challenges to the independence of the judiciary and the importance of promoting capacity-building activities for judges and magistrates with regard to international human rights law.

9. On 8 and 9 May 2014, the Special Rapporteur participated in an international symposium on justice and the rule of law organized by the YükselKarkinKüçük Attorney Partnership in Istanbul, Turkey, during which she delivered a speech on the various forms of interference, pressures and attacks against the judiciary.

10. On 13 June 2014, the Special Rapporteur presented her annual thematic report to the Human Rights Council, which was focused on judicial accountability (A/HRC/26/32). She also presented her report on her official country visit to the Russian Federation (A/HRC/26/32/Add.1). In addition, the Special Rapporteur introduced the training manual on the application of international human rights law by judges and magistrates that she was preparing for the twenty-ninth session of the Human Rights Council, in 2015. In this context, she encouraged States to reply to the questionnaire she had sent in order to provide input that would inform the development of the manual.

11. In her statement before the Human Rights Council, the Special Rapporteur also reiterated her serious concerns about acts of reprisal against individuals and groups who cooperated or were seeking to cooperate with the United Nations human rights mechanisms, including those who met with Special Rapporteurs during official country visits or implemented decisions taken by human rights mechanisms. Echoing the Secretary-General, the United Nations High Commissioner for Human Rights and fellow Special Rapporteurs, she called on States to complete discussions on Council resolution 24/24 at the General Assembly to ensure that the appointment of the system-wide senior focal point for reprisals would be made as soon as possible.

12. During the Human Rights Council session, on 11 June 2014, the Special Rapporteur also participated as a panellist in a side event entitled "Strengthening the rule of law in Venezuela", organized by the International Commission of Jurists. At that event, she discussed the following themes: the various aspects of the internal and external independence of judges; judicial independence and the harmonization of case law; and the role of court presidents in safeguarding judicial independence.

13. On 18 June 2014, the Special Rapporteur participated in an event entitled "Independence of the judiciary: international standards and practice", organized by the Mission to Serbia of the Organization for Security and Cooperation in Europe, in Belgrade.

14. On 15 July 2014, the Special Rapporteur was the keynote speaker at a press conference on Cambodia's recent judicial law reforms organized by the International Bar Association's Human Rights Institute and held in Phnom Penh.

15. Moreover, since she last reported to the General Assembly, the Special Rapporteur has sent requests, and reminders of requests, for official visits to the Governments of Argentina, China, Egypt, Fiji, France, Germany, Greece, India, Iraq, Kenya, Nepal, the Philippines, Portugal, Spain, Tunisia, the United States of America and Venezuela (Bolivarian Republic of). She would like to thank the Governments of France, Germany, Greece, Iraq, Kenya, Morocco, Nepal, Portugal, Spain, Tunisia and the United States of America for inviting her to visit their countries.

III. Justice and the post-2015 development agenda

A. The Millennium Development Goals framework

16. The Millennium Declaration, adopted on 8 September 2000 by the General Assembly (resolution 55/2), set out, within a single consensus document, the ambitious commitments of Member States at the threshold of the new millennium in the areas of peace, security and disarmament; development and poverty eradication; the protection of the environment; human rights, democracy and good governance; and the protection of the vulnerable. On that occasion, heads of State and Government emphasized that the key challenge facing humanity was the need to ensure that globalization became a positive force for the world's population.

17. The Millennium Declaration had initially included clear references to the rule of law, justice and human rights. In particular, the heads of State and Government resolved to strengthen respect for the rule of law in international as in national affairs (para. 9) and declared that they would spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development (para. 24).

18. The Millennium Development Goals were established in 2001 on the basis of the Millennium Declaration as the development framework for the next 14 years and rapidly gained international and national support. The Goals were aimed at making the United Nations a more effective instrument for eradicating poverty and fostering development by focusing on the following limited priorities: eradicate extreme poverty and hunger (Goal 1); achieve universal primary education (Goal 2); promote gender equality and empower women (Goal 3); reduce child mortality (Goal 4); improve maternal health (Goal 5); combat HIV/AIDS, malaria and other diseases (Goal 6); ensure environmental sustainability (Goal 7); and develop a global partnership for development (Goal 8). For each Goal, targets and indicators were developed, providing clear indications of how the Goals would be attained and how to measure progress.

19. While some of the Millennium Development Goals reflected to some extent human rights belonging to the social and economic rights categories, they lacked wide-ranging references to existing international human rights standards. Indeed, references to issues related to justice, governance, accountability and the rule of

law, whose importance had been clearly emphasized in the Millennium Declaration, were notably absent from the final framework document. In particular, the Millennium Development Goals were silent on the devastating effects of conflict, violence, injustice and discrimination on development.

20. The Special Rapporteur wishes to stress that she does not reject the key role played by the Millennium Development Goals on a global scale. The Goals established a development framework in which clear targets and indicators were prescribed in a limited number and with the hope of maximizing effectiveness. In addition, the political consensus that surrounded the adoption of the Goals led to the unprecedented political impetus that catalysed efforts to realize them and assisted in tracking progress and successes over the past 13 years. Nevertheless, progress on some of the Goals masked growing disparities along lines of gender, geography, age, ethnicity, disability and socioeconomic status, among others things.[2]

21. In the opinion of the Special Rapporteur, the need for a true paradigm shift is evident, as the models of economic analysis that led to the adoption of the Millennium Development Goals development framework did not address issues related to inequalities and repression. Economic growth alone does not suffice to measure human development, because the concept of development encompasses much more than can be accounted for by economic indicators and benchmarks. People's demands for development are not limited to purely economic claims, but include claims of justice, non-discrimination and opportunities. Thus, it is evident that a comprehensive development model should take all these aspects into consideration.

22. The importance of including access to justice in the post-2015 development agenda is based precisely on the fact that access to justice constitutes a right that permits the fulfilment of other rights, be they civil, cultural, economic, political or social. Therefore, the new development framework must reflect the full range of international human rights, which means that it should include careful attention to the fair administration of justice. As reaffirmed by the Office of the United Nations High Commissioner for Human Rights, the universally agreed, and universally applicable, normative framework of human rights is more relevant than ever to the global challenges of development.[3]

23. The Special Rapporteur also strongly supports the position expressed by the Chairs of the United Nations human rights treaty bodies in a joint statement on the post-2015 development agenda in May 2013, in which they stated in particular that insufficient attention to the human rights principle of accountability and access to justice had undermined incentives to reach goals and foreclosed any remedy for people whose rights had been bypassed or abused in the development process.

24. In this context, efforts must be made to achieve higher levels of accountability. The human rights normative framework clearly identifies rights holders and duty bearers that have an obligation to respect, protect and fulfil human rights. A human-rights-based approach to the new development framework would ground the future development objectives in a universally accepted and adopted normative framework.

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[2] Centre for Economic and Social Rights, "A matter of justice: securing human rights in the post-2015 sustainable development agenda" (2013), p. 6.

[3] United Nations System Task Team on the Post-2015 United Nations Development Agenda, "Towards freedom from fear and want: human rights in the post-2015 agenda" (May 2012), p. 5.

25. The Special Rapporteur hopes that the recognition of the need for a new approach in the post-2015 development agenda will provide the necessary push for Member States to agree on a next set of sustainable development goals that will be more inclusive and focused on the interrelationship among the rule of law, human rights, justice and development.

B. The interconnectedness of the rule of law, justice and development

1. Rule of law: enabler and outcome of development

26. According to the Secretary-General, the rule of law can be defined as a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.[4]

27. In line with the Secretary-General's definition of the rule of law, the United Nations Office on Drugs and Crime (UNODC) explained that one should understand the rule of law as: a legal and political order based on the values of human rights where human security is guaranteed; an enabling condition for development through the provision of social order, security, and enforced rights and obligations; and a process by which development outcomes are achieved through clear systems to adopt rules, make decisions and deliver services that are essential for sustainable development, such as quality education.[5]

28. In this context, the Special Rapporteur has always emphasized that respect for the rule of law is fundamental in any functioning democracy and that the independence of the justice system has a central role to play as the institutional guardian of the enforcement of the rule of law. Equal access to justice and equality before the courts and tribunals are human rights that are essential aspects of the rule of law.

29. Yet, according to the Commission on Legal Empowerment of the Poor, 4 billion people around the world are robbed of the chance to better their lives and climb out of poverty, because they are excluded from the rule of law.[6] This situation is unacceptable.

30. As explained by the Commission, when the law works for everyone, it defines and enforces the rights and obligations of all. This allows people to interact with one another in an atmosphere that is certain and predictable. Thus, the rule of law is not a mere adornment to development; it is a vital source of progress.[7] The Commission leaves no doubt that in its opinion, the rule of law and poverty reduction, and thereby development, are interrelated to the point that there will be no sustainable progress in one area unless the other area is fully taken into account in all policies and measures.

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[4] S/2004/616, para. 6.

[5] UNODC, "Accounting for security and justice in the post-2015 development agenda" (October 2013), p. 8.

[6] Commission on Legal Empowerment of the Poor, "Making the law work for everyone", vol. I (2008), p. 1.

[7] Ibid., p. 3.

31. In a recent report, UNODC emphasized that the consequences of failure to implement the rule of law, such as fear of violence, corruption, a culture of impunity and lack of accountability, threatened the legitimacy of the social contract, undermined the rule of law and slowed, and perhaps reversed, development progress.[8]

32. In the opinion of the Special Rapporteur, the failure to consider essential aspects of the rule of law, such as justice and security, has had a tremendous negative impact on achievements related to the Millennium Development Goals. As noted by the Executive Director of the Open Society Justice Initiative, no low-income country experiencing armed conflict has achieved a single Millennium Development Goal. To the contrary, conflict-affected States — those, by definition, where the rule of law is lacking — count for disproportionately high percentages of the developing world's poor, uneducated and infant deaths. In advanced economies too, those portions of the population denied access to justice suffer from higher levels of discrimination in education and other public services.[9]

33. According to UNODC, there are pragmatic reasons to incorporate security and justice priorities into the post-2015 sustainable development framework. The Office adds that improvements in some aspects of security and justice are statistically correlated with corollary gains in key development areas. By way of comparison, the Commission on the Legal Empowerment of the Poor has shown how improvements in access to justice are also correlated with gains in access to key development sectors such as health, education, environmental sustainability and gender equality.[10]

34. In his report entitled "A life of dignity for all: accelerating progress towards the Millennium Development Goals and advancing the United Nations development agenda beyond 2015" (A/68/202), the Secretary-General, while noting the importance of transparency and accountability for ensuring citizens' involvement in policymaking, clearly acknowledged the interconnectedness among development, human rights and the rule of law. In paragraph 95 of the report, he went one step further by stating that legal empowerment, access to justice and an independent judiciary and universal legal identification could also be critical for gaining access to public services.

35. Adding its voice to the discussions, the Open Working Group of the General Assembly on Sustainable Development Goals,[11] in paragraph 144 of its 2014 progress report, concluded that good governance at all levels based on human rights, the rule of law, democracy, access to justice and to information, transparency and accountability, and peaceful and non-violent societies was an enabler of sustainable development.

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[8] UNODC, "Accounting for security and justice in the post-2015 development agenda", pp. 6 and 7.

[9] See James Goldston, "Why development needs the rule of law" (Open Society Justice Initiative, 4 April 2013).

[10] UNODC, "Accounting for security and justice in the post-2015 development agenda", pp. 18 and 19.

[11] Established in paragraph 248 of the outcome document of the United Nations Conference on Sustainable Development, entitled "The future we want" (General Assembly resolution 66/288, annex).

36. The Special Rapporteur is of the view that the rule of law and development are mutually reinforcing concepts. Indeed, the rule of law encompasses a variety of aspects related to development, including the provision of access to fair and responsive justice systems capable of delivering effective remedies in the event of non-compliance with human rights relevant to development goals.

37. In this context, the Special Rapporteur strongly believes that the promotion of justice and the consolidation of the rule of law provide the necessary tools for the fostering of more equitable, inclusive and sustainable development. The rule of law is both a facilitator and an outcome of development. Consequently, the contribution of the rule of law to sustainable development, poverty reduction and the security and empowerment of citizens cannot be overemphasized.

2. Corruption: a cross-cutting issue that undermines both the rule of law and development

38. The Special Rapporteur decided to make reference to the cross-cutting issue of corruption in order to illustrate her position concerning the centrality of the rule of law to the achievement of sustainable development.

39. References to corruption were left out of the Millennium Development Goals. This led the Chairs of the United Nations human rights treaty bodies to assert, in their May 2013 joint statement on the post-2015 development agenda, that special attention must be paid to tackling broader governance issues such as corruption. Yet, crimes constituting corruption and offences against integrity not only directly undermine the rule of law, the credibility of State institutions, and democracy, but also can have a significant and negative impact on both development processes and outcomes, thereby undermining social and economic development.[12]

40. The deleterious effects of corruption on economic and social development is an issue that cannot be tackled without addressing the phenomenon in a comprehensive manner, including its rule of law aspects. In particular, a judiciary of undisputed integrity is an essential institution for ensuring compliance with democracy and the rule of law.

41. Given that the judicial system serves to check other public institutions, a judiciary that is independent and not corruptible is fundamental in upholding the rule of law and human rights and monitoring the appropriate performance of public functions. At both the domestic and global levels, when other protections fail, the judiciary provides a bulwark to the public against any encroachments on rights and freedoms under the law (A/67/305, para. 14).

42. In particular, securing and strengthening the institutional independence of judges, prosecutors and lawyers is central for protecting these actors from external or internal pressures and interference and enabling them to discharge their professional duties with integrity, propriety and impartiality. Judges, prosecutors and lawyers should be confident that they can properly carry out their lawful functions without any kind of fear, harassment or intimidation in their professional lives (ibid., para. 96).

[12] For a more comprehensive analysis of judicial corruption and the role of the justice system in combating corruption, see A/67/305.

3. A comprehensive framework for access to justice in the post-2015 development agenda

43. As already highlighted, the definition of development should be broader than that on which the Millennium Development Goals were based. Development cannot be linked only to economic growth, but must encompass such concepts as justice, the rule of law, institutional quality, good governance, peace and security.

44. The Special Rapporteur is of the view that the rule of law offers both a conceptual framework and a range of tools that can help translate the rights discourse into concrete results, as adherence to some core rule of law principles can be practically measured. Building peace and effective governance based on the rule of law and sound institutions, in particular an independent judiciary, is essential in the post-2015 development agenda.

45. In addition, the Special Rapporteur agrees with the affirmation of UNODC that, notwithstanding the importance attached to peace and security during the United Nations Conference on Sustainable Development and consultations within and outside the United Nations since 2012, the development debate is relatively silent on issues related to the rule of law and in particular the place of security and justice in the post-2015 agenda, and that while the interconnections between security, justice, and development are accepted in principle at the highest levels, there are considerable disagreements about how they might be practically inserted into the process.[13]

46. The Special Rapporteur would like to call upon all Member States to make every effort to concretize their commitments in the form of a series of targets and indicators related to the rule of law, justice and human rights, to guide and complement development policies, goals and measures.

C. The importance of access to justice and the independence of the justice system in the post-2015 development framework

47. Access to justice, as defined by the United Nations Development Programme (UNDP), is the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards.[14] This definition, generally accepted by the international community, fills the gap left by international human rights treaties in which no specific definition of access to justice can be found. Several international and regional human rights instruments nonetheless address access to justice as a fundamental right that should be guaranteed to all individuals.

48. Access to justice is directly related to the principle of judicial independence, as the integrity, independence and impartiality of the judiciary are essential elements of an efficient and transparent justice system, that contributes to the protection of human rights and the fostering of economic development.[15]

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[13] UNODC, "Accounting for security and justice in the post-2015 development agenda", p. 7

[14] UNDP, *Programming for Justice: Access for All — A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice* (2005), p. 5.

[15] See UNDP, "Access to justice: practice note" (2004).

49. The independence of the justice system and access to justice are two of the central elements of the rule of law. While the Special Rapporteur will confine her analysis in the present section to those two elements, she would like to note that other important aspects of the rule of law, such as security, governance, decision-making and accountability, are fundamental and therefore should also be fully integrated into the post-2015 development agenda.

1. Access to justice: a right in itself and a means to enforce one's rights and entitlements

50. As clearly affirmed by the Special Rapporteur's predecessor, Leandro Despouy, access to justice constitutes both a fundamental human right in itself and the means of enforcing or restoring the exercise of rights that have been disregarded or violated (A/HRC/8/4, para. 17). Access to justice is therefore a human right fundamental to any democratic system aimed at guaranteeing the human rights of all in full equality. As a consequence, the lack of access to justice has serious consequences for the full enjoyment of human rights.

51. Access to justice thus permits the fulfilment of all human rights, because without it, people are unable to claim their rights or challenge crimes, abuses or violations committed against them, which in turn can trap them in a vicious circle of impunity, deprivation and exclusion.

52. As a consequence, access to justice is essential for development, because when members of vulnerable groups fall victim to human rights violations, they experience a widespread sense of unsafety and instability, which contributes to further poverty and underdevelopment. Fair and effective justice systems able to provide people with effective redress and adequate remedies constitute the most efficient way to ensure a sense of safety, stability and prosperity by reducing the risks associated with violence and abuses of rights and by deterring perpetrators from committing further violations.

53. In its broadest sense, the concept of access to justice involves not only access to the judicial system, but also access to other procedures and institutions that assist individuals to claim their rights and deal with State bodies, including national human rights commissions, ombudsmen or mediation institutions (A/62/207, para. 38).

54. Access to justice can be considered in terms of various complementary aspects: (a) access per se, i.e., the possibility to gain access to the justice system with adequate legal representation, which is fundamental for converting a problem into a judicial claim; (b) the availability of a well-functioning justice system, i.e., a system that allows for a fair judgement/decision within a reasonable time frame; and (c) the possibility to support the complete judicial process, meaning, for example, that persons involved should not have to abandon a judicial action during the trial for reasons beyond their control (in this regard, the system should provide the resources and instruments necessary to guarantee support throughout the judicial process).

55. As previously indicated, access to justice is closely linked to a series of rights widely recognized in international and regional human rights instruments. For example, the right to a fair trial implies, among other things, access to a predetermined and impartial court, whose decisions are based on law, following

proceedings that observe procedural guarantees. In turn, the right to an effective remedy strengthens the conditions of access to justice insofar as it includes effective procedural guarantees such as amparo or habeas corpus in the demands and requirements of a fair trial or the right to protection of the courts. Moreover, the right to equality before the courts prohibits any distinction regarding access to courts and tribunals that are not based on law and cannot be justified on objective and reasonable grounds. The concept of access to justice is also inextricably connected to the principle of equality of arms and the right to legal assistance, which must be prompt, confidential and free of charge when warranted, among other things (A/HRC/8/4, paras. 17-22).

56. As highlighted by the Special Rapporteur in a previous report (A/HRC/23/43 and Corr.1), the aim of legal aid is to contribute to the elimination of obstacles and barriers that impair or restrict access to justice by providing assistance to people who would otherwise be unable to afford legal representation and access to the court system. Accordingly, the definition of legal aid should be as broad as possible, including not only the right to free legal assistance in criminal proceedings, as defined in article 14.3 (d) of the International Covenant on Civil and Political Rights, but also the provision of effective legal assistance in any judicial or extrajudicial procedure aimed at determining rights and obligations, including civil rights.

57. Indeed, if access to justice is to preserve its essential universal nature and thus to function adequately and appropriately, it is necessary to establish a judicial system that guarantees rights and to take parallel measures, such as establishing mechanisms and programmes to facilitate free legal assistance in both criminal and civil cases. In this context, it is relevant to emphasize the paramount importance of ensuring that legal aid schemes are autonomous and independent so that they serve the interests of those who need financial support in order to have access to justice on an equal basis with others.

58. The Special Rapporteur notes the importance of acknowledging the comprehensive nature of access to justice. In this regard, the previous Special Rapporteur highlighted that, as a means of claiming the enjoyment or restoration of other rights (civil, political, economic, social and cultural), access to justice was not limited to ensuring admission to a court, but applied to the entire process, which must be conducted in conformity with the principles of the rule of law (including fair trial and procedural guarantees), right through to execution of the sentence. Thus, the principles of equality and the conditions of accessibility and effectiveness that must characterize any mechanism established to deal with disputes must be observed not only at the start of settlement proceedings, but throughout (A/HRC/8/4, para. 58).

59. Free and equal access to justice enables people to claim their rights, to testify to the crimes with which they have been confronted, and to extricate themselves from the vicious circle of impunity and exclusion. By providing an effective tool for breaking this vicious circle, access to justice allows for the empowerment of various segments of society on an equal basis. Empowering people to claim their rights is even more essential in contexts of widespread violations of human rights.

60. Various factors and circumstances impede appropriate and equal access to justice (ibid., paras. 24-32). The Special Rapporteur's predecessor noted that the lack of public policies to eliminate obstacles to access to justice had greater impact

on groups in a vulnerable situation or living in extreme poverty, or who were culturally, economically or socially disadvantaged (ibid., para. 48).

61. For example, financial barriers have a huge impact on access to justice. At the institutional level, they result in, inter alia, lack of training of judges and other operators of the justice system, difficult material conditions of work, and lack of funds for the financing of free legal aid. Institutional obstacles can also include problems relating to the excessive and arbitrary use of detention and incarceration, as well as corruption (A/67/278, paras. 48-50 and 57-59). At the individual level, court proceedings can represent a heavy financial burden, as can costs related to initiating and pursuing the proceedings, including lawyers' fees. Such financial barriers disproportionately affect those in low-income social sectors, in particular people living in extreme poverty.

62. Barriers relating to information also hamper access to justice. In addition, lack of knowledge of their fundamental rights, available remedies and procedures to follow to claim their rights, inter alia, directly affect people's access to justice.

63. Access to justice can be further undermined by cultural barriers, such as language difficulties, social stigma, socioeconomic subordination, lack of empowerment and mistrust in the justice system (ibid., paras. 20-27).

64. Furthermore, access to justice is too often hindered by physical barriers, which include, inter alia, geographical distance from courts or State institutions, such as the police, and facilities that are inadequate for groups with special needs, such as people with disabilities and elderly persons. The Special Rapporteur wishes to note that all of these barriers are further compounded in armed conflict or post-conflict situations, in which State institutions are often extremely fragile, if not non-existent.

65. In addition, particularly in relation to the poor and vulnerable, access to justice can be seriously undermined by legal and normative barriers, such as inadequate legal frameworks, lack of judicial review and lack of legal identity, and by structural problems, such as excessive delays in lawsuits and legal procedures, excessive formalism, lack of legal standing and limited impact of litigation. Furthermore, the use of informal justice systems by those for whom it is difficult to gain access to the justice system raises serious problems with regard to the enforcement of human rights (ibid., paras. 85-90).

66. As summarized by UNODC, aspects such as the accessibility, effectiveness, speed, and quality of services delivered by formal and informal justice systems have an impact on the extent to which "fair" justice is experienced. Those aspects represent areas in which goals, targets and indicators could be formulated.[16]

67. Like any other human right, access to justice requires that a system of guarantees be put in place so that its full exercise can be facilitated. As indicated above, these guarantees must include the legal and material conditions that will ensure equal access to justice for all. In order to establish these guarantees, simply refraining from creating obstacles is not sufficient; positive action is necessary, which includes the active removal of material obstacles to the effective exercise of the right to access to justice.

[16] UNODC, "Accounting for security and justice in the post-2015 development agenda", p. 16.

68. As already affirmed by the Special Rapporteur on extreme poverty and human rights, access to justice is crucial for tackling the root causes of poverty, exclusion and vulnerability (A/67/278, para. 5). The establishment of effective justice therefore contributes to the eradication of extreme poverty and hunger.

69. Improving access to justice also offers the hope of improving the lives of women through the establishment of effective means to enforce their rights. To support this argument, it was noted that efforts to provide women with access to justice had reduced illegal practices disproportionately affecting women, such as the payment of dowries.[17] As highlighted by the Special Rapporteur in a previous report, access to justice plays a crucial role in the effective protection of women's human rights, the empowerment and development of women and the advancement of gender equality (A/HRC/17/30 and Corr.1, para. 82).

70. Access to justice can also have a positive impact on the environment and environmental rights. Indeed, as noted by the organization Namati, access to legal help can assist communities to secure rights over common land, giving them more control over their livelihoods and greater incentive to preserve the environment.[18] In 1992, the link between access to justice and the environment was established in principle 10 of the Rio Declaration on Environment and Development, in which Member States recognized that environmental issues were best handled with the participation of all concerned citizens, at the relevant level, and that effective access to judicial and administrative proceedings, including redress and remedy, must be provided.

71. In addition to their obligation to create a legal framework that allows for the free exercise of human rights and fundamental freedoms, and to punish all violations of those rights, States must therefore provide to rights holders the necessary conditions for the exercise of the right to access to justice and oblige particular institutions to contribute in such provision. This includes an obligation to organize the Government and all the structures and institutions through which public power is exercised with a view to ensuring the free and full exercise of human rights, which can be claimed and enforced through a judicial remedy.

72. Guaranteeing de jure access to judicial and adjudicatory mechanisms is not sufficient to ensure that all individuals have de facto access to justice. States must thus take positive measures to ensure that laws and policies are substantively non-discriminatory, because situations in which an individual's attempts to gain access to the competent courts or tribunals are systematically frustrated de jure or de facto run counter to the guarantee of equality before the courts.[19]

73. In summary, access to justice means that anyone should know and be enabled to claim the protections and services due to him or her under the law.[20] Access to justice as an essential component of the rule of law is, consequently, paramount to the development and construction of sustainable development goals in the post-2015 development agenda.

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[17] See Namati, "Justice 2015: how justice impacts development" (Open Society Justice Initiative, March 2013).

[18] Ibid.

[19] CCPR/C/GC/32, para. 9, and A/67/278, para. 11.

[20] See George Soros, "Development's missing ingredient" (Open Society Justice Initiative, 4 February 2014).

74. Recently, in a background note on the high-level event of the General Assembly on the contributions of human rights and the rule of law in the post-2015 development agenda, the President of the General Assembly reiterated that ensuring that all people could gain access to expeditious, transparent, effective, fair, responsive, participatory and accountable justice systems (including informal or customary systems of justice) allowed for the peaceful resolution of disputes and provided effective remedies for grievances and claims in a fair and independent manner. This provided the social stability conducive to sustainable development. At the same time, the independence of the judicial system, together with its impartiality and integrity, was an essential prerequisite for upholding the rule of law.

2. Strengthening the independence, impartiality, integrity and competence of the justice system[21]

75. The independence of the judiciary has been defined as international custom and a general principle of law recognized by the international community.[22] It also constitutes a treaty-based obligation, as shown by the requirement of an "independent tribunal" established in article 14, paragraph 1, of the International Covenant on Civil and Political Rights, which, as asserted by the Human Rights Committee, is an absolute right that is not subject to any exception (CCPR/C/GC/32, para. 19). Moreover, as enshrined in the Bangalore Principles of Judicial Conduct, judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial.

76. The importance of the independence of judges has also been underlined by the Human Rights Committee in its interpretation of the content and scope of article 14 of the International Covenant on Civil and Political Rights. According to the Committee, the requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception (ibid.).

77. Without independence of the judiciary, there is no separation of powers, and without separation of powers there can be no genuine rule of law or democracy. The importance of the principles of the separation of powers and the rule of law was affirmed by the Special Rapporteur's predecessor when he noted that it was the separation of powers, together with the rule of law, that opened the way to an administration of justice that provided guarantees of independence, impartiality and transparency.[23] As pointed out by the Human Rights Committee in its general comment No. 32, a situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal (CCPR/C/GC/32, para. 19).

78. When the administration of justice fails, impunity takes over and the consequences can be dramatic. Impunity undermines democracy, the rule of law, people's trust in State institutions, and opportunities for development. Furthermore, weak judicial systems that fail to guarantee access to justice for all lead to situations

[21] For a more comprehensive analysis of the guarantees of judicial independence, see A/HRC/11/41.

[22] In the sense of article 38.1 (b) of the Statute of the International Court of Justice.

[23] A/HRC/11/41, para. 18; see also E/CN.4/2004/60, para. 28.

in which the most marginalized groups of the population are excluded from the judicial system, which places them in a position of need rather than empowerment.

79. Factors and circumstances that affect the independence of the judiciary are numerous and diverse and encompass both individual and institutional dimensions. Guarantees need to be put in place to address all of these elements in a comprehensive way, in order to strengthen judicial independence and thereby ensure the proper functioning of the judiciary.

80. Above all, the independence of the judiciary should be legally guaranteed at the highest level, where possible in the Constitution. Other institutional guarantees that need to be set up to ensure the independence of the judiciary include: (a) transparent selection and appointment procedures for judges and magistrates, including clear and objective criteria based on competence, integrity and merit; (b) the principle of the natural or lawful judge, which prohibits ex post facto tribunals and limits the use of special courts and military courts; (c) a sufficient budget for the judiciary, which must provide for adequate resources to enable the justice system to perform its functions properly; (d) freedom of association and expression for judges and magistrates, in particular allowing their participation in debates concerning their functions and status, as well as legal issues; (e) the assignment of court cases, which must be transparent and objective in order to prevent interference from outside and within the judiciary; (f) internal independence, which must provide for transparent procedures for the appointment of court Chairs; and (g) the availability of disciplinary proceedings, which must respect principles of fair trial and due process at the same time as it reinforces the accountability of judges and magistrates.

81. Regarding the individual dimension of independence and impartiality, the safeguards should include the guaranteed tenure and non-removability of judges; personal immunity for certain acts or omissions in the exercise of their judicial functions, which must be clearly established in legislation and the code of conduct; promotions based on objective factors; and adequate conditions of service, including salaries, human and material resources, security, and training and capacity-building.

82. As members of the judiciary, judges have an obligation and responsibility under international law to ensure that substantive rights are enjoyed without discrimination of any kind, such as on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, in order to protect and enforce human rights for all equally. As the Special Rapporteur has previously noted, this entails a proactive duty to ensure that the judges are upholding international equality and non-discrimination standards in both case deliberations and the application of court procedures. Judges can recommend the repeal or amendment of a law or rule if inconsistent with international human rights standards (A/66/289, para. 38).

83. In this regard, all the actors of the justice system need to be adequately educated and trained so that the system can be truly independent and play a transformative role in promoting and protecting human rights in a fair and transparent manner, with due regard to States' international obligations and commitments, instead of perpetuating entrenched discriminatory patterns by strictly applying unfair and unequal laws.

3. Establishing goals, targets and indicators encompassing the elements guaranteeing access to justice and an independent justice system

84. The Special Rapporteur disagrees with the simplistic argument that "justice cannot be measured". She believes that human rights law sets out measurable standards of conduct and operational principles that enable justice to be assessed.

85. As underlined in a worldwide appeal to the States Members of the United Nations, there are practical ways to measure progress towards justice, and Governments are making great strides in doing so. Ministries of justice already gather data on case volume and duration. National statistics offices often include legal knowledge and legal access in their surveys.[24]

86. Indeed, Governments and judiciaries have long used indicators and other measures to monitor and assess the functioning of the justice system and the courts. In addition, United Nations agencies have developed many series of indicators[25] relating to the measurement of progress in the functioning of the justice system, in particular with regard to the criminal justice system or access to justice.

87. Several methodological tools are available to assist in measuring progress in the area of the rule of law. These tools should provide guidance with respect to which indicators should be chosen, and should include administrative data, legal needs studies, perception surveys, expert surveys and qualitative research.[26]

88. Specifically in relation to access to justice and judicial independence, goal-setting should reflect the fact that these concepts are both ends in themselves and means to enforce other human rights and entitlements. Both qualitative and quantitative indicators should be developed so that both means and outcomes can be measured. It is also urgent to recognize the importance of processes, because, as noted by Peter Chapman of the Open Society Justice Initiative, it is often the process by which national priorities are developed that ultimately determines their success.[27]

89. Recalling the Brasilia Regulations regarding Access to Justice for Vulnerable People, the Special Rapporteur wishes to underscore that the judicial system must be designed, and indeed is being designed, as an instrument for the effective defence of the rights of vulnerable people. In this endeavour, making efforts to disaggregate the data and material used to inform indicators and measures and assess progress towards the targets set by gender, ethnicity or race, and economic status or other relevant categories, will go a long way in helping Governments to focus development efforts on those who need them most.

90. Furthermore, given that the judiciary must be independent and impartial, and must also appear to be independent and impartial to a reasonable observer, there is a need to account for the reality lived by people who engage with the justice system

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[24] See "Appeal to the Member States of the United Nations: justice should be included in the post-2015 development goals", available at www.namati.org/justice2015.

[25] For example, the rule of law indicators prepared under the auspices of UNODC that elaborated 135 separate metrics to measure progress in the different aspects of the rule of law; or the human rights indicators developed and promoted by the Office of the United Nations High Commissioner for Human Rights.

[26] See Peter Chapman, "Function, not form: defining targets for justice in the post-2015 development agenda" (Open Society Justice Initiative, 7 November 2013).

[27] Ibid.

when designing targets and indicators. Indeed, only by understanding the concrete experiences of people who use the justice system or have tried to gain access to it will it be possible to find the specific solutions that will improve access to justice for all and without discrimination, de jure or de facto.

91. It is important to highlight that while universal goals ensure a unified purpose, targets and indicators need to reflect national and local conditions, priorities, capacities and resource limitations.[28]

92. Throughout her mandate, the Special Rapporteur has continuously underlined that no ideal justice system exists; rather, there are universal principles that must be respected in the structure and functioning of any judicial system, so that it can duly fulfil its purposes.

93. Thus, while the universality of human rights and the rule of law should be placed at its centre, thereby establishing a valuable common ground for all, the new development framework should support contextually relevant strategies. Against this background, the process of designing, adopting and implementing necessary reforms will certainly be perceived as just as important as their content.

94. Indeed, a development agenda based on the rule of law and justice allows for the necessary monitoring and accountability mechanisms to be put in place so that people can claim their rights and gain access to effective remedies when their rights have been violated or neglected.

95. In this context, access to justice and strengthening the independence of the justice system should be goals in their own right, reflecting the many commitments made by the international community and referred to in the present report. Fundamental aspects and elements of access to justice, the independence of the judiciary and the rule of law should also be integrated into concrete and measurable targets.

96. Many targets and indicators relating to the rule of law, access to justice and the independence of the judiciary have already been suggested. Indicators are important as markers for evaluating results. According to the United Nations, it is possible to measure access to justice quantitatively and qualitatively. For example, in assessing whether the judicial system offers access to criminal justice, the following elements can be used to develop indicators: the availability of interpreters, the protection of the rights of defendants and victims, access to redress for miscarriage of justice, fees to obtain access to courts, the availability of free legal assistance for indigent defendants, the quality of legal representation, and response to gender-based violence.[29] According to UNDP, access to justice can be measured through the development of such indicators as the accessibility of court processes; the availability of adequate legal representation; access to more informal legal processes, such as small claims courts and administrative tribunals; the availability of legal advice; and public legal education.[30]

97. For example, in its 2013 report entitled "A new global partnership: eradicate poverty and transform economies through sustainable development", the High-level

[28] UNODC, "Accounting for security and justice in the post-2015 development agenda", p. 43.

[29] See *The United Nations Rule of Law Indicators: Implementation Guide and Project Tools* (2011).

[30] See UNDP, "Access to justice: practice note".

Panel of Eminent Persons on the Post-2015 Development Agenda proposed targets addressing, inter alia, legal identity, the reduction of violent deaths and accessible, independent and well-resourced institutions. In turn, the international non-governmental organization Namati recommended legal identity and accessible systems of dispute resolution as targets. Saferworld also laid out a host of targets and indicators.[31]

98. The Special Rapporteur wishes to reiterate that more attention and more resources aimed at making justice systems more effective and transparent are needed in order to ensure equal access to justice for all.

IV. Conclusions

99. **It is undeniable that there exists a direct and intrinsic connection between sustainable development and the rule of law and human rights, including access to justice and the independence of the justice system.**

100. **In this context, the Special Rapporteur would like to recall that, in 1993 at the World Conference on Human Rights in Vienna, States acknowledged that the administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development.**[32]

101. **Thus, not only should the issues relating to access to justice and justice administration feature high on the development agenda, but they should also be explicitly included in the practical development framework that will be set up to continue and complement the legacy of the Millennium Development Goals. This is essential to help break the vicious circle of poverty, exclusion and vulnerability. The central role that a well-functioning, independent, impartial, transparent and competent justice system can play in enabling people to claim their human rights or gain access to an effective remedy when their human rights have been violated should also be highlighted in the post-2015 development agenda.**

102. **A human-rights-based approach to development is necessary to place human beings back at the centre of the process of development, defining rights holders and duty bearers, and advance the fundamental and cross-cutting human rights principles of participation, accountability, non-discrimination, empowerment and the rule of law, all of which are essential for achieving sustainable development without leaving anyone behind. As a result, it is imperative that human rights standards and obligations be mainstreamed throughout the post-2015 development agenda.**

103. **The universality of human rights makes a compelling case for the inclusion of the concept of access to justice and the fair administration of**

[31] See Peter Chapman, "Function, not form: defining targets for justice in the post-2015 development agenda".

[32] Vienna Declaration and Programme of Action, para. 27.

justice in the post-2015 development framework. In this regard, indicators have been developed at the international and national levels to track progress in achieving human rights for all, including rights related to the justice system. In particular, indicators to measure the performance of the justice system and public satisfaction therewith have already been developed. These indicators could be assessed and adapted in order to be reflected in the future development practical framework.

104. **The Special Rapporteur wishes to conclude with a question raised by James Goldston before the General Assembly on 10 June 2014: what role will justice play in the next generation of development goals?[33] While it is now recognized that the rule of law and human rights are necessary preconditions for peaceful, stable and prosperous societies, justice will play the role that Member States will be willing to let it play. The final message is therefore very simple: development needs justice, and that need can be concretized only if Member States take up their responsibilities.**

V. Recommendations

105. **The following recommendations should be considered in conjunction with, and bearing in mind, ongoing discussions regarding the incorporation of human rights concepts, such as justice and the rule of law, into the post-2015 development framework. The Special Rapporteur echoes the Open Society Justice Initiative in recognizing that the international community currently has a unique opportunity to close the gap between the rights and development worlds, and it is through this lens that the following recommendations should be considered.**

106. **In formulating the post-2015 development framework, special attention should be paid to the absence of many human rights issues in the Millennium Development Goals. Specifically, States must learn from the silence of the Goals regarding the destructive effects of conflict, violence, injustice and discrimination on development. In this context, the Special Rapporteur urges all States to consider the explicit inclusion of human rights concerns in the post-2015 development framework.**

107. **The Special Rapporteur reiterates that a predominantly economic perspective on development does not address the demands of development, such as justice, non-discrimination and opportunity, and urges that the post-2015 development framework include the full range of international civil, cultural, economic, political and social rights, including in the form of goals, targets and indicators.**

108. **States should seek to incorporate the universally accepted and adopted human-rights-based approach into the post-2015 development framework, with a preliminary emphasis on ensuring access to justice and the independence and integrity of the judiciary. Specific targets and indicators should be dedicated to access to justice and the independence of the judiciary.**

[33] See James Goldston, "Justice for development: integrating justice and human rights into the post-2015 development framework" (Open Society Justice Initiative, 10 June 2014).

109. The Special Rapporteur urges States to proactively remove material obstacles to gaining access to justice and to take positive measures to ensure that laws and policies are non-discriminatory, thereby tackling the root causes of poverty, exclusion and vulnerability, all of which, in addition to being unacceptable in a democracy, negatively affect development.

110. The Special Rapporteur calls on States to pay particular attention to governance issues, specifically issues of corruption, as they threaten public legitimacy, undermine the rule of law and have a negative impact on development progress.

111. States should make every effort to concretize their commitments to incorporating references to the rule of law and justice into the post-2015 development framework, by formulating stand-alone goals accompanied by both qualitative and quantitative targets and indicators, as well as mainstreaming references to the rule of law and justice into targets and indicators related to other goals. In this regard, States should use administrative data, legal needs studies, perception surveys, expert surveys and qualitative research to guide their selection of both qualitative and quantitative indicators.

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protection of and assistance to internally displaced persons

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, in accordance with Assembly resolution 68/180 and Human Rights Council resolution 23/8.

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Report of the Special Rapporteur on the human rights of internally displaced persons

Summary

In the present report, the Special Rapporteur outlines the main activities that he undertook from August 2013 to July 2014. In the thematic section, he addresses the challenge of finding durable solutions for internally displaced persons in urban settings. The report is therefore intended to serve as an advocacy and policy tool for States, authorities at all levels, including municipal authorities, development and humanitarian actors and donors on how to jointly contribute, with the full participation of the internally displaced persons concerned, to durable solutions in urban areas.

I. Introduction

1. The present report provides an overview of the main activities undertaken by the Special Rapporteur on the human rights of internally displaced persons from August 2013 to July 2014. It also contains a thematic section on durable solutions for internally displaced persons in urban settings.

II. Mandate and activities of the Special Rapporteur

A. Mandate

2. The Human Rights Council, in its resolution 23/8, mandated the Special Rapporteur to address the complex problem of internal displacement, in particular by engaging in coordinated international advocacy and action for improving protection and respect of the human rights of the internally displaced, continuing and enhancing dialogue with Governments, intergovernmental, regional and non-governmental organizations and other relevant actors, working towards strengthening the international response to internal displacement and mainstreaming the human rights of the internally displaced into all relevant parts of the United Nations system.

3. In accordance with his mandate, the Special Rapporteur endeavours to promote a rights-based approach to internal displacement through dialogue with Governments, the United Nations, regional organizations and the international community. He wishes to express his appreciation to those Governments that have issued invitations or otherwise engaged with him and to the various United Nations agencies and other intergovernmental or non-governmental organizations that have supported his activities.

B. Country visits

4. Since his previous report to the General Assembly (A/68/225), the Special Rapporteur has undertaken country visits to Serbia, including Kosovo,[1] South Sudan and Sri Lanka. The findings of his missions can be found in the thematic report submitted to the Human Rights Council in June 2014 (A/HRC/26/33, paras. 6-15) and in the addenda thereto (A/HRC/26/33/Add.2-4). In addition, the Special Rapporteur undertook country visits to Kenya, Azerbaijan, Côte d'Ivoire and Haiti during the reporting period. The central message of all those visits was the call for durable solutions for internally displaced persons.

Kenya

5. Finding durable solutions for internally displaced persons is a long and complex process that requires humanitarian, development and peacebuilding action, as reiterated by the Special Rapporteur in his continued dialogue with the Government of Kenya during his follow-up visit from 29 April to 7 May 2014. He found that, although progress had been made in supporting those internally

[1] References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).

displaced by the post-election violence of 2007-2008 to find durable solutions, significant obstacles to achieving that goal persisted, most notably regarding socioeconomic and political integration.

6. The Special Rapporteur also highlighted the situation of those newly displaced as a result of other major and recurrent events, including ethnic and intercommunal violence or natural disasters, during his visit to Moyale, in the northern county of Marsabit. He urged the Government to implement, without further delay, its progressive legislation on the prevention of and assistance and protection to internally displaced persons and other affected communities, which was enacted in 2012.

Azerbaijan

7. From 18 to 24 May, the Special Rapporteur visited Azerbaijan at the invitation of the Government. He visited settlements in and around Baku and in the western district of Agdam.

8. He welcomed the significant progress made by the Azerbaijani authorities, through the construction of durable housing in both rural and urban areas, in improving the living conditions of the population in general and of internally displaced persons in particular.

9. He called for peace and development rights-based approaches to durable solutions for internally displaced persons. He noted that reaching a peaceful settlement to the unresolved conflict was critical to resolving the protracted situation of internal displacement, which had lasted for more than 20 years in Azerbaijan. He also noted that the inclusion of internally displaced persons in development planning strategies in such areas as housing, education, health and employment was necessary to strengthen their resilience, livelihood opportunities and self-reliance. He insisted that internally displaced persons had to be fully involved in the relevant decisions and processes and recommended that a survey of intent and a needs-based assessment should be carried out in preparation for durable solutions.

Côte d'Ivoire

10. From 16 to 20 June, the Special Rapporteur visited Abidjan, Côte d'Ivoire, to assess the progress made in fostering durable solutions for internally displaced persons, two years after his first mission to the country. He engaged in dialogue with internally displaced persons living in informal settlements.

11. The Special Rapporteur welcomed the fact that the vast majority of internally displaced persons had returned to their area of origin, but stressed their need for support to secure their most basic needs, including shelter, food and water, and to rebuild their lives sustainably. He added that the internally displaced persons who were still in search of durable solutions should not be forgotten, in particular at a time when humanitarian actors were drawing down their activities. He noted that the ratification of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa by Côte d'Ivoire in 2014 offered the opportunity to use the Convention as a framework for concerted action on internally displaced persons. He also stressed the need to ensure that internally displaced

persons have a chance to participate in the national elections in 2015 and have their voices heard.

Haiti

12. From 29 June to 5 July, the Special Rapporteur visited Port-au-Prince to assess the overall situation of internally displaced persons in Haiti, four years after the earthquake. With humanitarian activities being scaled down, the Special Rapporteur called for a transition from a largely humanitarian approach to development strategies that would include durable solutions for internally displaced persons against the backdrop of addressing vulnerability and extreme poverty. He reaffirmed the primary responsibility of the Government to work towards development rights-based approaches to alleviating poverty while incorporating durable solutions for internally displaced persons. The long-term issues, such as housing, land and the land tenure system, the integration of internally displaced persons into local neighbourhoods and the development of sustainable livelihoods through the rental subsidy scheme for internally displaced persons, in addition to the most immediate needs relating to sanitation and clean and safe water, were identified as key priority areas for internally displaced persons and the population at large in the search for durable solutions. The Special Rapporteur recommended that efforts should be made to integrate internally displaced persons into sectoral reforms, including the new housing policy, and that the necessary profiling, needs assessments and surveys of intent should be carried out among all internally displaced persons, including those who had left the camps, to verify whether they had found durable solutions.

Requests for country visits

13. Since his previous report, the Special Rapporteur has made or reiterated requests to visit various countries, including the Central African Republic, Colombia, the Philippines, the Syrian Arab Republic and Ukraine.

C. Cooperation with regional and international organizations

14. The Special Rapporteur is pleased to report on his continuing collaboration with regional and international organizations. He engaged closely with the African Union on the promotion, ratification and implementation at the national level of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa. For that purpose, he visited the African Union headquarters on 20 and 21 March and 14 and 15 August.

15. The Special Rapporteur participated in a joint initiative of the Organization for Security and Cooperation in Europe (OSCE), including delegations from participating States, and the Office of the United Nations High Commissioner for Refugees (UNHCR) on 22 July to promote a more collaborative approach to addressing displacement using the Protection Checklist, elaborated jointly by OSCE, UNHCR and his mandate, as a tool for ensuring the protection of displaced populations and affected communities at all stages of conflict. He also informed the OSCE participating delegations of his findings in OSCE participating States affected by displacement, following his missions to Georgia (10-14 June 2013), Serbia, including Kosovo (9-12 October 2013) and Azerbaijan (19-24 May 2014).

16. The Special Rapporteur maintained a strong partnership with civil society organizations. In particular, he appreciates the support provided by the Brookings-London School of Economics Project on Internal Displacement, the strategic partnership with the Joint IDP Profiling Service and the collaboration with the Internal Displacement Monitoring Centre. In the field, civil society organizations played a vital role in supporting him, in particular during country visits.

D. Mainstreaming the human rights of internally displaced persons in the United Nations system

17. The Special Rapporteur continued to support the mainstreaming of the human rights of internally displaced persons within the United Nations system and the wider humanitarian community by participating actively in the work of the Inter-Agency Standing Committee, the Global Protection Cluster and the humanitarian affairs segment of the Economic and Social Council.

18. He also addressed the Security Council on 30 May in an Arria-formula meeting focusing on the common goals that the Council and partners, including his mandate, are seeking to achieve:

(a) The restoration of national authority and protection, given that situations in which national authorities are dysfunctional, or are among those perpetrating arbitrary displacement, are often determined to be a threat to international peace and security;

(b) The protection of civilians, which includes ensuring the safety of internally displaced persons in areas of refuge, during flight and upon return;

(c) Ensuring durable solutions, which is a long and complex process that confronts not only humanitarian and development challenges, but also peacebuilding challenges.

19. The Special Rapporteur, with his two predecessors, participated in a panel session held on 11 and 12 December 2013 as part of the dialogue on protection challenges organized by UNHCR on the theme "Protecting the internally displaced: persisting challenges and fresh thinking". Calls were made for better cooperation between humanitarian and development actors from the early stages of displacement and for the needs of internally displaced persons to be included in the post-2015 development agenda.

20. In June 2014, the Special Rapporteur participated in a Central and West African consultation, held in Abidjan, in preparation for the World Humanitarian Summit, where he advocated the inclusion of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa and durable solutions for internally displaced persons in the outcomes of the consultation.

III. Achieving durable solutions for internally displaced persons in urban settings

A. Introduction

Relevance of the issue and role of the Special Rapporteur

21. In the present report, the Special Rapporteur aims to provide guidance and raise greater awareness to build momentum on the complex issue of durable solutions for internally displaced persons in urban settings, focusing in particular on local integration. An urban context has various dimensions, including demographic, historical, environmental, economic, social and political aspects, which add to the complexity of responding coherently and sustainably to internal displacement.[2] In addition, there are global mega-trends such as rapid urbanization, population growth and increased human mobility that make achieving durable solutions in urban settings one of the most complex and pressing challenges (see A/66/285, para. 28).

22. For more than 20 years, the mandate holders have consistently addressed urban displacement and its consequences and called for durable solutions during numerous country visits, including to Colombia (A/HRC/4/38/Add.3), Côte d'Ivoire (A/HRC/23/44/Add.1), East Timor (E/CN.4/2000/83/Add.3), Kenya (A/HRC/19/54/Add.2), Somalia (A/HRC/13/21/Add.2), the Sudan (A/HRC/23/44/Add.2) and, more recently, Haiti (report to be submitted to the Human Rights Council at its twenty-ninth session, in June 2015). They have also undertaken considerable work through law and policy support in Afghanistan, Kenya, Somalia and Yemen, considering the specific aspects of urban displacement, on particular matters such as eviction or relocation, notably in the context of climate change and slow-onset disasters that prompt movements of people to urban locations in search of livelihoods, security and safety (see A/66/285, para. 30). In previous thematic reports on a more systematized response to internally displaced persons outside camps (A/HRC/19/54) and the role of humanitarian and development actors in achieving durable solutions for internally displaced persons through peacebuilding in the aftermath of conflict (A/68/225), the Special Rapporteur has also considered other aspects further developed herein.

23. The Special Rapporteur has consistently suggested a wider approach to the response and solutions in urban areas, considering not only the needs of internally displaced persons themselves, but also those of other displacement-affected communities, such as host communities, including the urban poor, communities in areas of return or communities in places to which internally displaced persons are relocated. Such an approach allows similar needs of different groups to be addressed, while not leaving displacement-specific needs unaddressed.

24. The Special Rapporteur notes that the response to internal displacement in urban settings has too often focused on short-term assistance and programming, instead of a solution-focused approach early on in the response that recognizes that urban displacement is often long lasting. Neglecting it can only contribute to impoverishment in urban areas. One need that is distinct and specific to the situation

[2] François Grünewald, "Stratégies: fragiles cités", *Diplomatie*, vol. 17 (2005), p. 72. Available from www.urd.org/IMG/pdf/Diplo17.pdf.

of internally displaced persons is that of a durable solution.[3] The implementation of durable solutions requires the identification of internally displaced persons in urban areas and their location. It is the profiling of internally displaced persons and other displacement-affected communities in urban areas that often provides the needed evidence base to plan for and implement a response geared towards solutions. It also enables the identification of needs that are similar among different groups and those that are specific to the situation of internally displaced persons only.

Conceptual framework on durable solutions

25. The Special Rapporteur recalls that, pursuant to principle 28 of the Guiding Principles on Internal Displacement, the primary responsibility to establish conditions and provide for the achievement of durable solutions lies with State authorities at all levels, including mayors and other municipal authorities that play a central role in this context.

26. Achieving durable solutions for internally displaced persons is a long and complex process. Internally displaced persons must exercise a free and informed choice of durable solutions, i.e. to reintegrate at the place of origin (return), to locally integrate in areas in which they have found refuge (local integration) or to integrate in another part of the country (settlement elsewhere in the country). The Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons is fully applicable to solutions in urban contexts and the solutions process that it outlines is an important indicator for long-term planning processes. A key indicator is, according to the Framework, when internally displaced persons no longer have specific assistance and protection needs linked to their displacement and can enjoy their human rights without discrimination on account of their displacement. However, solutions in urban areas, such as local integration, are often challenged by additional obstacles arising from the specificities of internal displacement in such settings. They are discussed below.

B. Internal displacement patterns in urban areas

27. Patterns of urban displacement are multiple and encompass displacement from rural to urban areas and inter-urban and intra-urban displacement.

28. Displacement in urban areas can stem from conflict in those areas. In some countries, such as Colombia or the Syrian Arab Republic, armed hostilities have taken place largely in urban, and hence densely populated, areas and therefore resulted in record numbers of internally displaced persons in urban areas. Sudden-onset natural disasters that struck urban centres, such as those affecting Tacloban, Philippines, Port-au-Prince or New Orleans, United States of America, had an enormous impact on the inhabitants and resulted in large-scale displacement. Such displacement is often lasting, as the Special Rapporteur witnessed himself in July 2014 during his visit to Haiti, where durable solutions remain distant for many. Many cities in areas prone to sudden-onset or slow-onset disasters — coastal and deltaic areas or riverine zones — face future risks of internal displacement.

[3] See principles 28 and 29 of the Guiding Principles on Internal Displacement and article 11 of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.

29. Flight to urban areas following conflict or disaster in another part of the country is also a common feature of internal displacement today. Urban areas may promise more safety than rural areas as a result of the anonymity and invisibility that one can acquire there. For example, there are girls in Abidjan who were victims of sexual violence in places of displacement in rural areas or who became pregnant during displacement and moved to the city. A primary reason for flight to urban areas is family links, but the hope of finding alternative livelihoods is also a factor that influences the flight of internally displaced persons, who often lose their original livelihoods through displacement. Similarly, education opportunities and better services, such as special health care, regularly lead to flight to urban areas and peripheries. Urban areas may therefore allow internally displaced persons to better maintain their coping mechanisms and resilience, albeit at low levels.

30. Some urban areas, such as in Darfur, have grown expansively, thereby enveloping camps for internally displaced persons that were originally located away from the areas in question. Elsewhere, such as in Port-au-Prince, some internally displaced persons live in urban settlements for the displaced that are joined with poor urban informal settlements. In other instances, it is common to find urban internally displaced persons in unused public buildings or on unused public land, in rented private buildings living invisibly within host communities or in host families. Their living conditions in urban areas are often precarious and, regularly along with the urban poor, they often live in urban parts or peripheries that are not connected to basic services and far from livelihood opportunities, where transportation is not affordable for them or does not exist. A study carried out by UNHCR and the World Bank on Afghanistan showed that only one third of the internally displaced persons surveyed had access to electricity, adequate supplies and sanitation facilities.[4] In Kabul, informal settlements for internally displaced persons are not protected against the harsh weather conditions, which caused the deaths of several children during the winter of 2012.

31. The impacts of crises on urban contexts lead to combining factors such as the deterioration of urban living conditions, spatial disorganization, the loss of social structure, administrative deregulation or institutional instability. Urban displacement regularly results in a significant increase in the urban population. This normally causes fear or actual situations of overstretched basic services, such as health centres or schools, especially where service provision was limited or insufficient before displacement or if conflicts or disasters have damaged the infrastructure.[5] Similar fears or realities hold true where natural resources, such as water, are scarce or where urban unemployment rates are high. This underlines the importance of considering the situation of internally displaced persons and other displacement-affected communities in urban areas in finding durable solutions that allow both similar and distinct needs of internally displaced persons to be met.

32. The lack of urban planning creates specific needs for internally displaced persons in urban informal settlements. Most urban environments already face

[4] World Bank Economic Policy and Poverty Team for South Asia and UNHCR, "Vulnerability of internally displaced persons in urban settings" (2011). Available from http://siteresources.worldbank.org/AFGHANISTANEXTN/Resources/305984-1326909014678/8376871-1334700522455/IDPPolicyBriefEnglish.pdf.

[5] See Joint IDP Profiling Service, "Guidance for profiling urban displacement situations: challenges and solutions" (June 2014). Available from http://reliefweb.int/sites/reliefweb.int/files/resources/original_GuidanceUrbanProfiling_JIPS.pdf.

difficulties relating to space management and shortage of land generally and for internally displaced persons in particular. Solutions relating to land and housing can be compounded by the destruction of houses or the deterioration of land caused by conflict or disaster. The complexity of the absence of land tenure systems and the lack of available and affordable land in urban areas and comprehensive urban planning may exponentially increase the difficulty of identifying long-term housing solutions for urban dwellers and urban internally displaced persons.[6]

More comprehensive urban planning and protection

33. Urban planning, or the lack thereof, has an impact on the rights of urban internally displaced persons. Their access to adequate housing requires comprehensive public policy interventions by the national authorities as a framework for the provision of housing and the engagement of development partners. Urban development should therefore go hand in hand with adequate planning and resources that would address the housing needs of internally displaced persons in the context of durable solutions. Urban development planning serves as a guide to investment in housing and infrastructure by both public and private actors so that investment is integrated and contributes strategically to urban growth. In most contexts affected by urban displacement, however, urban planning frameworks are outdated, non-existent or in the midst of a process of revision.[7] The disconnect between the urban planning time frame and the onset of internal displacement adds another layer of complexity. Urban planning processes, when they exist, are often agreed upon for a long-term period, leaving little leeway, if any, with regard to how to accommodate flows of internally displaced persons. Such processes should therefore be informed by displacement dynamics and be made more flexible in order to better adapt to situations of urban internal displacement. In this regard, tools and strategies put in place by humanitarian and development agencies after a crisis, such as the provision of shelter, the relocation to urban settings or the provision of assistance to host families, could benefit long-term urban planning if they are better synchronized from the very onset of displacement. As indicated in the UNHCR-World Bank study on Afghanistan, urban planning should provide for the regularization or planned relocation of informal settlements, given the uncontrolled growth of slums whose inhabitants remain on the margins of society in impoverished conditions. Clarity of policy and action is a prerequisite to finding just and practicable solutions to the challenges of unplanned urbanization and its relationship with poverty and risk factors. An appropriate legislative and administrative framework regulating urban planning and housing should include dialogue and collaboration between all relevant stakeholders, beginning with all ministries potentially involved in the process, international organizations (both humanitarian and development actors), civil society and displacement-affected communities, internally displaced persons and their representatives.[4]

[6] See Brookings Institution and International Organization for Migration, "Supporting durable solutions to urban, post-disaster displacement: challenges and opportunities in Haiti" (2014). Available from http://publications.iom.int/bookstore/free/Supporting_Durable_SolutionstoDisplacement_Haiti_Feb2014_Brookings.pdf.

[7] See Simone Haysom, *Sanctuary in the City? Urban Displacement and Vulnerability: Final Report* (London, Humanitarian Policy Group, June 2013). Available from www.citiesalliance.org/sites/citiesalliance.org/files/ODI-Report.pdf.

Specific protection concerns for internally displaced persons in urban areas

34. Internally displaced persons in informal urban settlements typically reside in makeshift shelters, where they are barely protected from intruders and are exposed to the risk of sexual and gender-based violence. Urban displacement leads to changes in gender relations, thereby increasing risks of domestic violence,[7] sexual and gender-based violence, survival sex, exploitation and forced labour. Access to protection and assistance for internally displaced women is vital.

35. The absence of the rule of law is aggravated by ineffective local authority and policing. The lack of security of land tenure, extinct tenancy agreements and/or the absence of other forms of user rights further expose internally displaced persons to the risk of (forced) evictions and therefore to secondary displacement, which results in increased protracted displacement and significantly hampers durable solutions. Forced eviction of urban internally displaced persons, without providing alternative housing and without recourse to legal remedies, is an increasing phenomenon of urbanization and urban planning and upgrading initiatives. As noted above, urban planning must be combined with the durable solution needs of internally displaced persons and displacement-affected communities in urban areas.

36. The challenges posed by unequal and discriminatory access to education, health services or employment are protection risks regularly faced by internally displaced persons in urban areas and may sometimes be compounded by the lack of individual documentation. The loss or lack of documentation in urban contexts can further exacerbate the already-dire situation of internally displaced persons, given that, without identification, it is generally impossible to sign a lease, seek formal employment or even gain legitimate access to a mobile telephone or the Internet.[8] In some countries, such as Côte d'Ivoire, internally displaced persons are put at risk of statelessness. This situation also increases the chances of being arrested, being forced to pay a bribe and intimidation[8] and renders access to health care, education and other services more difficult.

37. In many instances, the lack of access to adequate housing for internally displaced persons, in particular in urban areas, remains a perennial problem, irrespective of the length of displacement. In Afghanistan, internally displaced persons who live in temporary shelters, shacks or camps more than five years after being displaced account for as much as 61 per cent of the internally displaced population.[4] Durable housing strategies, for example in Serbia, including Kosovo, should be considered to be part of durable solutions with livelihood opportunities for the local integration of those displaced in urban areas.

C. Challenges and opportunities in achieving durable solutions

Challenges

Coordination

38. The competent authorities have the primary duty and responsibility to establish conditions and means that allow internally displaced persons to attain durable solutions (see principle 28 of the Guiding Principles on Internal Displacement).

[8] Jeff Crisp, Tim Morris and Hilde Refstie, "Displacement in urban areas: new challenges, new partnerships", *Disasters*, vol. S1 (2012).

Very often, however, there is a lack of coordination between the national and municipal authorities when it comes to carrying out that duty at the level of policy formulation and implementation, which leads to policy gaps. Municipal authorities tend to prefer short-term measures of forcible eviction or return of urban internally displaced persons to their places of origin, if possible.[7] This challenge can be dealt with through law and policy as tools for providing the basis for coordination and, as stated above, the mandate holders have given law and policy development support in specific instances of urban displacement, such as in Afghanistan, Kenya, Somalia and Yemen.

Effective long-term response

39. A comprehensive understanding of all the structural and cyclical causes of particular urban displacement dynamics is necessary for national Governments and local or municipal authorities and the international community to respond effectively using an all-encompassing durable solution approach. For example, in Afghanistan, while conflict and insecurity are usually the first reported causes of displacement, the loss of means to meet basic needs, services and livelihoods during such displacement emerge strongly as concurrent factors driving displacement to urban areas. The Special Rapporteur therefore calls for an effective national and international response to internal displacement in urban settings, which should be based on a long-term focus on durable solutions from the outset of such displacement. Understanding of urban displacement shows that short-term responses focused on assistance and programming mitigate the situation of urban internally displaced persons in the short term, but are inadequate to deal with the often long-lasting characteristic of urban displacement and the consequential impoverishment of internally displaced persons and displacement-affected communities. This effective long-term response approach entails the joint engagement of humanitarian and development actors, which the Special Rapporteur considered in his report to the General Assembly in 2013 (A/68/225).

Challenges relating to profiling and participation of internally displaced persons

40. The Special Rapporteur reiterates the overall importance of profiling as a collaborative information-gathering process, which is indispensable for advocacy on durable solutions, policymaking and, most notably, planning and implementing durable solutions. Profiling is often more complex in urban settings, where internally displaced persons and displacement-affected populations live in informal settlements, usually without personal documentation, and where basic data are sometimes non-existent. Settlements for internally displaced persons, for example in Darfur, are not always static, whether in size or in location. In Mogadishu, which hosts one of the world's largest urban populations of internally displaced persons, the number of settlements has often increased uncontrollably and some settlements have shifted, as a whole or in part, on account of evictions or other secondary displacement.

41. Given that national censuses often omit informal settlements or internally displaced persons for lack of documentation, there may be little knowledge of the size or profile of the urban internally displaced population. National censuses, as conducted in Cote d'Ivoire in 2014, must be designed to identify internally displaced persons and their location. Experience shows, however, that, when confronted by outsiders asking questions, internally displaced persons feel

threatened, especially if they fear eviction or if they are asked questions relating to the informal sector.

42. Such complexities do not serve as excuses for not undertaking profiling, given that the failure to do so complicates planning and programming regarding durable solutions and may actually render such solutions unsustainable. Rather, the complexities point to the need for and importance of specialized and knowledge-based services in the field of profiling, such as those provided by the Joint IDP Profiling Service. Georgia, Serbia and Sri Lanka offer examples of recent profiling exercises in the context of durable solutions. The Special Rapporteur insists on the absolute necessity of profiling exercises to ensure that policies and programmes effectively respond to the evidence-based durable solution needs of internally displaced persons. In many contexts, the lack of cross-thematic profiles of the experience and intentions of displaced persons makes programming and policies less adapted and accurate.[5] As often emphasized by the Special Rapporteur, the profiling exercise should, to achieve its goal, remain participatory and respectful of the anonymity required for the protection of those concerned.

Comprehensive understanding of the framework of durable solutions

43. Transitional solutions are sometimes mistaken for durable solutions. For example, in the case of Haiti, many actors understood durable solutions only in terms of camp closures or access to housing, overlooking the cross-sectoral and protection dimensions of durable solutions. The Special Rapporteur recalls that a comprehensive understanding of the framework of durable solutions is well embedded in the Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons. He reiterates the importance of using and implementing the Framework in efforts by the competent authorities, the international community, civil society and other stakeholders to tackle durable solutions comprehensively. A recent study by the International Organization for Migration and the Brookings Institution on durable solutions in Haiti disclosed that, even among those familiar with the Framework, there were debates on how to make it more specific and operational and there were concerns that it would favour preferential treatment for internally displaced persons compared with the urban poor and other groups at risk.[6] Lopsided views on durable solutions underscore the importance of advocacy, awareness-raising and a comprehensive approach that absorbs the context of development, vulnerability or poverty and also displacement-affected communities.

44. As the Special Rapporteur mentioned in his previous thematic report to the General Assembly, the barriers between development, peacebuilding and humanitarian actors are numerous and include various planning cycles, time frames, mandates, operational systems, terminology, vocabulary and approaches to working with Governments (A/68/225, para. 42). One way of bridging those gaps is to ensure that all actors involved in issues of urban displacement are aware of and trained on the rights based-approach to durable solutions of the Framework on Durable Solutions, in addition to how to better engage with local governments, local communities and internally displaced persons themselves to ensure that their rights and their perspectives are adequately integrated into programming and urban planning (see A/HRC/19/54, para. 25).

Durable solution projects for internally displaced persons

45. The Special Rapporteur notes that interesting projects and practices have been tested in various contexts in the search for durable solutions for internally displaced persons. Not enough time has passed and no cross-studies have been carried out to identify the most effective measures and the reasons for their success in any given context, however. In this regard, the Special Rapporteur strongly encourages that such comparative research be carried out. He is currently working with other partners on a project to measure progress in achieving durable solutions for internally displaced persons based on the identified criteria of the Framework on Durable Solutions using commonly agreed measurement indicators.

46. In some contexts, government and municipal authorities, sometimes with the support of international stakeholders, have developed urban planning initiatives that do seek to take the specificities and needs of internally displaced persons into consideration. In Afghanistan, for example, a newly adopted national policy on internal displacement provides for measures to ensure that internally displaced persons in informal settlements are permitted to upgrade their accommodation to meet the internationally agreed Sphere standards for emergency shelter, explore community-level initiatives to lend, rent or sell land in areas in which they have settled and identify other options that would grant them security of tenure, such as usufruct schemes.[9]

47. The municipal authorities of Kabul and the Government are working with the Japan International Cooperation Agency to develop an urbanization plan for the building of new housing units over the coming eight years. The expected benefits include strengthened municipal capacity to manage urban development and deliver services; improved institutional coordination and monitoring of key urban indicators; increased access to basic services for urban households; phased regularization of tenure for 50 per cent of households living in informal settlements; upgraded public services and facilities, including new urban area development; increased availability of affordable shelters, including an increase of 50 per cent in the number of housing units and of 30 per cent in the area of serviced land on the market, coupled with access to affordable finance; and an improved urban environment with green areas and open spaces.[10] It is to be noted, however, that, while internally displaced persons are expected to benefit from the initiative, the plan has been criticized for ignoring the informal settlements in which many live. Furthermore, it may be difficult to relocate internally displaced persons and other groups living in informal settlements en masse.

48. With regard to cash-grant mechanisms, which include grants for the reconstruction and repair of houses and rental subsidy schemes, they attempt to strengthen tenure security for internally displaced renters, while ensuring that those internally displaced persons move into properties that meet minimum safety standards. For example, in Haiti, two years after the earthquake, the Government addressed some displacement-related housing, land and property issues in the

[9] See Shobha Rao and Jan Turkstra, "Enhancing security of land tenure for internally displaced persons", *Forced Migration Review*, No. 46 (May 2014). Available from www.fmreview.org/en/afghanistan.pdf.

[10] See Rainer Gonzalez Palau, "Rapid urbanization and displacement: the case of Kabul City" (September 2013). Available from www.cimicweb.org/cmo/afg/Documents/Social_Infrastructure/20130924_CFC_Urbanisation_Displacement_Kabul.pdf.

context of its "16/6" project. The project, first launched in August 2011, envisaged the reconstruction of 16 earthquake-affected neighbourhoods and the closure of six major related camps by providing grants to the internally displaced persons living in those camps to rent housing, to construct a new house or to repair their own houses that were damaged by the earthquake. With regard to the rental subsidy mechanism, it also attempted to raise awareness of renters' rights and required the signing of a formal lease.[6]

49. While providing rental cash grants can contribute effectively to rebuilding capacity for internally displaced persons who have lost all their assets and provide them with some autonomy in their access to housing, some critics have stressed that the cash interventions would have been better had they been oriented to the market context, i.e. a commensurate increase in the housing stock to avoid "rehoused" internally displaced persons going to overcrowded areas, inhabiting unsafe and informal urban expansions or forming new camps. Criticism also included timing issues, given that the camps were closed before all the internally displaced persons concerned had been offered appropriate alternative housing. The uncertainty and lack of coordination could have been avoided with better preparedness and consultation with those concerned. On the positive side, the Special Rapporteur notes that the 16/6 project was not limited to cash interventions, but also included raising awareness of living standards, vocational training, livelihood programmes and enhanced access to basic services.

50. The Special Rapporteur emphasizes that, to offer durable solutions for internally displaced persons and the communities in which they live, cash interventions should be accompanied by income-generating or other livelihood activities, which also benefit the community, such as the development of small businesses and legal support in housing, land and property matters to facilitate length and security of tenure. In addition, those interventions should be accompanied by measures ensuring access to basic services for the benefit of the entire community. For example, in Bogota, the mayor's development plan for the city, which seeks to a create "a more humane Bogota", puts at its core the promotion of the human rights of victims of the armed conflict who fled to Bogota and the implementation of the Victims and Land Restitution Act adopted in 2011. Article 12 pertains to the implementation of the Act, article 21 relates to the housing programme for internally displaced persons and article 42 deals with how internally displaced persons will receive health services. Elected mayors of the various localities within Bogota have also initiated projects for the economic development of internally displaced persons living in those localities. In January 2014, the mayor of the Bosa locality developed a project to promote and assist entrepreneurial projects for vulnerable populations, specifically for internally displaced persons and persons with disabilities.

51. The Special Rapporteur also encourages initiatives aimed at including existing informal settlements in comprehensive urban planning schemes, thereby increasing security of tenure and adequate living conditions, including in terms of access to services. In the case of Somalia, national and local authorities, United Nations agencies and international non-governmental organizations worked together to devise a comprehensive urban development plan to address the precarious living conditions of internally displaced persons in Boosaaso. Of the inhabitants of Boosaaso, 1 in 4 is internally displaced, with most residing in cramped and unsanitary squatter camps on the peripheries of the city. The private owners of the

land on which displaced persons were living forced them to pay high rents, offered no protection from fires that frequently destroyed large sections of the settlements and forbade the construction of any sanitary infrastructure such as wells or latrines.

52. The United Nations Human Settlements Programme, along with international non-governmental organizations, suggested a plan based on principles of sustainable urbanization, slum prevention and incremental upgrading. Aspects of the intervention included what is termed a "build back better approach" to emergency response from fires, which took fires as an opportunity to introduce firebreaks and mobile shelter kits made of metal poles and fire-retardant canvas to prevent the spread of future fires. The intervention also involved disaster-preparedness programmes. Furthermore, a simple training guide for upgrading temporary settlements, aimed at municipal officials and community leaders, was developed to allow for a swift transfer of the basic skills needed and to empower displaced people to initiate improvements themselves.[11] This intervention halved the number of families affected by fires.

53. In addition, a campaign was launched regarding the rights of internally displaced persons to land tenure in Boosaaso. Consequently, landlords entered into an agreement with local authorities and representatives of various displaced groups, which opened the door to upgrading the settlement and included simple principles preventing ad hoc evictions. The campaign mobilized local authorities and traditional/religious leaders to define what would no longer be acceptable in the community. It focused on the positive contribution of internally displaced persons to the local economy and the impact on the host community of unhygienic conditions and heightened fire risks.

54. Other initiatives involve camp formalization. In some instances, internally displaced persons have lived in camp settings for years and created ties among one another, to the land that they occupy and to the neighbourhood communities. In such cases, camp formalization through local integration may be the best solution. This presupposes, however, that the authorities concerned solve the land tenure issue, among others.

55. The Special Rapporteur encourages initiatives that reinforce local capacity for the achievement of durable solutions. In this regard, the community resource centre run by the International Organization for Migration in Haiti is an example of how camp coordination and camp management tools relating to durable solutions can be used in urban environments and outside camps. The centre's objective is to use a community platform to provide municipalities with a district-level structure to support the planning, coordination and provision of information on reconstruction, return and local development. The main aim is to support local structures and provide both a hub for coordination and a physical space to be handed over at a later stage. This is therefore an example of how developing the capacity of local

[11] See Filiep Decorte and Tempra Ombretta, "Improving living conditions in Bossaso, Somalia", *Forced Migration Review*, No. 34 (February 2010). Available from www.fmreview.org/en/urban-displacement/16-18.pdf.

structures can contribute to making the transition from the humanitarian phase and early recovery and promoting durable solutions to coordination and participation.[12]

56. In disaster-prone areas, capacity-building initiatives should increase preparedness to respond to recurrent disasters with the aim of preventing further displacement. Such programmes already exist and should be replicated, if possible.

Opportunities and good practices

Ensuring the participation of internally displaced persons in durable solutions

57. In accordance with the Framework on Durable Solutions, all relevant actors need to respect the right of internally displaced persons to make an informed and voluntary decision on what durable solution is best for them. Internally displaced persons participate in urban economies, rent or buy urban housing and land and, in one way or another, seek to make use of urban opportunities and services.

58. In areas of informal settlements in which extreme poverty and lack of access to basic services prevail, host communities and their leaders have a crucial role to play. They were present before the natural disaster or conflict and will remain once all international actors leave. Durable solutions for internally displaced persons living side by side with other groups in those areas can therefore be reached effectively only with the participation of the community as a whole and community leaders in particular. Oversight by the local authorities in such processes is, however, key to avoiding the tensions and power struggles that often affect groups of internally displaced persons. The capacity of community representatives and local authorities should therefore be built around the common good, i.e. improving living conditions and access to services, reducing the risks for those particularly affected and promoting durable solutions. If their capacity is strengthened, local actors, communities, internally displaced persons and the urban poor in general become less vulnerable to power struggles between political leaders, gangs and large-scale development promoters and therefore increase their protection against urban violence, corruption and real estate speculation. This also presupposes engagement with a wide variety of stakeholders, such as the private sector, which can have a key impact on the reduction of poverty and development of the capacity for internally displaced persons to search for durable solutions, including through access to livelihood.

59. In some cases, such as in Colombia, there are hundreds of associations of internally displaced persons, representing various communities of origin, women's groups or indigenous groups, among others. The Government has set up a consultative process with those associations that reaches out to such groups. The Government of Georgia has also engaged in widespread consultations with internally displaced persons (see A/HRC/26/33/Add.1). While not flawless, such processes represent a meaningful effort by Governments to consult internally displaced persons. Consultations can affect the attitude of the Government towards such persons, as was the case in Afghanistan. For example, until 2013, the authorities had not considered internally displaced persons to be permanent citizens of Herat, but, following the consultations, the political elites of the city now

[12] CCCM Global Cluster, "UDOC: urban displacement and out of camp review" (2014), p. 49. Available from www.globalcccmcluster.org/tools-and-guidance/publications/urban-displacement-out-camps-review.

acknowledge the permanent settlement of those persons in the city. In a major breakthrough, the Government is now considering upgrading and regularizing the Maslakh settlement.[9] Measures aimed at achieving durable solutions for internally displaced persons can therefore yield positive results when internally displaced persons are treated not as objects, but as active participants in the search for, and implementation of, durable solutions.

IV. Conclusions and recommendations

60. **Achieving durable solutions for internally displaced persons in urban settings brings with it a set of complexities that States, local authorities, humanitarian and development actors, civil society and internally displaced persons themselves still need to address in a comprehensive and coordinated manner. A one-size-fits-all approach has proved to be inconclusive and it is therefore the primary responsibility of Governments to ensure that, in any given context, durable solutions to urban displacement are found, with the full participation of those affected. Political will in any given context from all stakeholders involved is of the essence.**

61. **Durable solutions remain available options for internally displaced persons, including those in urban settings. The very nature of urban displacement, however, tends to lend weight to local integration as the viable choice preferred by internally displaced persons in urban areas. Informed by the Guiding Principles on Internal Displacement and the Framework on Durable Solutions for Internally Displaced Persons, the Special Rapporteur reiterates his recommendations made in his previous reports (A/HRC/19/54 and A/68/225) and adds the following recommendations to:**

States affected by displacement

(a) **Insofar as internally displaced persons in urban settings are often invisible and live among the urban poor, continue to work to identify them and their location, whether with host families or elsewhere, in line with the Guiding Principles on Internal Displacement;**

(b) **Ensure that all causes and dynamics of displacement are addressed and that all three durable solution options are included in national laws and policies for internally displaced persons;**

(c) **Develop national frameworks, structures and policies on internal displacement, as already recommended (see A/68/225, para. 59 (a));**

National and municipal authorities

(d) **Ensure the full participation of internally displaced persons in drafting laws and policies that address durable solutions for them and undertake large-scale consultations with communities and neighbourhoods to address their broader concerns with regard to local integration for internally displaced persons or settlement in another neighbourhood and how they can be best implemented in practice, in tandem with host communities and the rest of the displacement-affected urban population;**

(e) Continue to accord priority to and monitor respect for the human rights of internally displaced persons, especially those most at risk of violations, regardless of the duration of displacement and until a sustainable solution is found;

(f) Formulate and carry out awareness-raising programmes for the public and with community representatives on the situation of internally displaced persons and durable solutions for them in urban settings;

(g) Consult internally displaced persons at both the urban planning and implementation stages, for example through community or neighbourhood representations involving both men and women;

(h) Appoint national and provincial task forces to initiate dialogue with municipalities and communities living in the poorest informal urban areas to discuss urgent needs and how to improve living conditions, including through relocation where the land occupied is unsuitable for permanent settlement. Such task forces could build on the decades of experience of Governments and several municipalities in designing and implementing participatory urban development projects targeted at improving the living standards of inhabitants of informal settlements;[4]

(i) Ensure the inclusion of the human rights of internally displaced persons in land tenure security plans, including through detailed mapping of existing public and private services in the sectors concerned;

(j) Establish transparent eligibility criteria for the allocation of land (rental or ownership) for internally displaced persons in urban settings, ensure that, as a right to which they are entitled, internally displaced persons have equal access to property if their means allow them to do so and, in this regard, take affirmative-action measures for access to land in urban areas by internally displaced persons and other urban poor facing similar insecurity of tenure;

(k) Propose settlement elsewhere, accompanied by specific measures, as part of the policy solution package available for internally displaced persons. If possible, local governments, with the support or advocacy of international agencies, should designate resettlement sites as part of disaster preparedness plans or work, taking into account future plans for urban growth, given that resettlement sites, even those deemed "temporary", are almost never temporary and influence urban growth;

(l) On the basis of the World Bank resettlement guidelines,[13] **establish resettlement guidelines to inform decision-making on land allocation procedures for those internally displaced persons unable to integrate locally or to return;**

(m) Develop incentives for return and resettlement to rural areas, accompanied by livelihood schemes and the development of rural areas as an alternative to urbanization;

(n) Establish integrated planning informed by displacement dynamics, with urban development plans, poverty reduction plans, general urban

[13] World Bank, *Involuntary Resettlement Sourcebook: Planning and Implementation in Development Projects* (Washington, D.C., 2004).

planning and upgrading, including slum upgrading, to include aspects specific to internal displacement and settlements and be carried out within government frameworks where possible, or alongside State actors;

(o) With the support of international organizations, implement livelihood programmes and vocational training aimed at bridging the gap between the existing skills of internally displaced persons and those required to enter the labour market in their place of displacement; and adapt vocational training to demographic groups, such as matching food and vocational training as a way to enable the participation of women, foster their resilience and obtain community buy-in;

Donor States

(p) Allocate sufficient funding to respond effectively and sustainably to internal displacement in urban contexts and, in that regard, increase the length of the funding cycle to allow actors to meet both immediate and long-term needs and engage State actors in governance-related objectives;

(q) Devote part of that funding to profiling exercises in both conflict-affected and natural-disaster-affected urban areas so as to better grasp the complexity of finding durable solutions for internally displaced persons in urban environments, having recourse to the expertise of the Joint IDP Profiling Service;

International organizations, including humanitarian and development actors, and urban planners as relevant

(r) Promote the development of an inter-agency platform for information management on trends and protection concerns with regard to internally displaced persons, making it publicly available, and develop a more comprehensive understanding of the complexity of urban environments and systems (e.g. responsible urbanization, urban planning and building codes);

(s) Implement the strategy developed in 2010 by the Inter-Agency Standing Committee Task Force on Meeting Humanitarian Challenges in Urban Areas in order to strengthen the ability of agencies to adapt their operations towards the achievement of durable solutions;

(t) Humanitarian and development actors should develop expertise in urban issues to bridge gaps between urban planning and a better understanding of displacement dynamics and should ensure the presence of urban advisers in their rosters;

(u) Establish a glossary of what a rights-based approach to internal displacement in urban settings means for humanitarian and development actors and urban planners;

(v) Address urban internal displacement, not only as a humanitarian concern, but also as a development concern and, in this context, implement the Inter-Agency Standing Committee recommendations on strengthening early recovery, ensuring that early recovery is integrated into all phases of the humanitarian programme cycle from the very onset of an emergency and that the approach is mainstreamed into the programming of other clusters;

(w) Urban planners should engage before crises, or as early into crises as possible, to build on existing capacity and coping mechanisms;

(x) Humanitarian actors should work more closely and effectively with municipal authorities, given that they are often the first point of contact with internally displaced persons, and, in particular, support government measures to find durable solutions for internally displaced persons by carrying out regular profiling exercises, including in informal settlements, with the participation of internally displaced persons, and undertake a study on mixed opportunities to reduce the risks facing internally displaced persons such as in areas of housing, access to livelihood and basic services;

(y) Undertake a comparative study on good practices with regard to housing, land allocation, tenure security and rental subsidies and assess the efficiency of protection against forced evictions;

(z) Given the little knowledge on the impact of displacement on health and emotional well-being and its influence on urban dynamics, expand research on protection gaps and needs, especially those of internally displaced persons particularly at risk, including women, children and persons with disabilities.

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Item 69 (a) of the provisional agenda*
Promotion and protection of human rights: implementation of human rights instruments

United Nations Voluntary Fund for Victims of Torture

Report of the Secretary-General

Summary

The present report is submitted in accordance with General Assembly resolutions 36/151 and 68/156. It describes the recommendations that were adopted by the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture at its thirty-ninth session.

* A/69/150.

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I. Introduction

A. Submission of the report

1. The present report was prepared in accordance with the arrangements approved by the General Assembly in its resolution 36/151, by which it established the United Nations Voluntary Fund for Victims of Torture. It presents the recommendations adopted by the Board of Trustees of the Fund at its thirty-ninth session, held in Geneva from 10 to 14 March 2014. The United Nations High Commissioner for Human Rights approved the recommendations of the Board on behalf of the Secretary-General on 28 March 2014. The present report complements the report on the activities of the Fund submitted to the Human Rights Council at its twenty-fifth session (A/HRC/25/25).

B. Mandate of the Fund

2. The Fund receives voluntary contributions from Governments, non-governmental organizations and individuals. In accordance with its mandate and the practice established by its Board of Trustees, the Fund provides grants to established channels of assistance, including non-governmental organizations, associations of victims and family members of victims, private and public hospitals, legal clinics, public interest law firms and individual lawyers, that submit projects involving medical, psychological, social, financial, legal, humanitarian and other forms of direct assistance to victims of torture and members of their families.

C. Administration of the Fund and Board of Trustees

3. The Secretary-General administers the Fund through the Office of the United Nations High Commissioner for Human Rights (OHCHR) with the advice of a Board of Trustees composed of five members acting in their personal capacity and appointed by the Secretary-General with due regard to equitable geographical distribution and in consultation with their Governments. The Board is currently composed of Maria Cristina de Mendonca (Portugal), Morad el-Shazly (Egypt), Anastasia Pinto (India) and Adam Bodnar (Poland). On 10 July 2014, the Secretary-General appointed Gaby Oré Aguilar (Peru) for a three-year term, renewable once, to replace Mercedes Doretti (Argentina) following the latter's resignation.

II. Management of grants

A. Admissibility criteria

4. Project admissibility criteria are outlined in the guidelines of the Fund for Victims of Torture, which were comprehensively revised at the thirty-ninth session of the Board of Trustees. The guidelines require a project to be presented by a non-governmental entity, including non-governmental organizations, associations of victims and family members of victims, private and public hospitals, legal clinics, public interest law firms and individual lawyers. The beneficiaries must be direct victims of torture or direct family members. Priority is given to projects providing

direct assistance to victims of torture, which may consist of medical or psychological assistance, help with social or financial reintegration through vocational training for victims or various forms of legal assistance for victims or members of their families, including assistance in seeking redress or applying for asylum. Depending on the resources available, the Fund may finance projects to organize training programmes, seminars or conferences to allow health-care professionals or other service providers to exchange and be trained on best practices. Requests for grants for projects involving investigation, research, studies, publications or similar activities are not admissible.

5. The Fund also provides emergency assistance for projects submitted in the intersessional period. Requests for this type of assistance are examined according to specific procedures outlined in the guidelines of the Fund. Emergency projects have to contain the same basic components as the regular ones (i.e. direct assistance to victims of torture and their families, non-governmental channels of assistance).

B. Monitoring and evaluation of grants

6. In accordance with the established practice of the Fund, evaluation and monitoring visits of organizations funded by the Fund are undertaken regularly by staff of the Fund secretariat, Board members and OHCHR field presences. Pre-screening visits are also undertaken to evaluate new project proposals. From 1 January 2014 to the time of writing the present report, visits have been conducted to some 62 projects in Argentina, Armenia, Bosnia and Herzegovina, Chile, Croatia, Egypt, Guatemala, Guinea, India, Ireland, Jordan, Lebanon, Mali, Mexico, Myanmar, Nepal, Paraguay, Romania, Spain, Tunisia, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Ukraine.

7. During the reporting period, the joint secretariat for the humanitarian funds (responsible for the administration of this Fund, the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery and the Special Fund established by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) has continued to align working methods with a view to heightening cost-effectiveness and sharing best practices. These efforts were noted with satisfaction by the Board of Trustees and yielded closer coordination with OHCHR geographic desks and field presences, as well as other partners, such as the Office of the United Nations High Commissioner for Refugees and resident coordinators.

III. Financial situation of the Fund

8. From 2008 to 2011, the annual voluntary contributions to the Fund decreased by 30 per cent ($3.6 million), amounting to $7.9 million in 2011. This negative trend appears to have come to a halt in 2013, although the Fund struggles to return to a satisfactory funding level, in other words a level that would enable it to meet all demands, including those made in the context of emergency and humanitarian crises.

9. Following the advice of the Board of Trustees, efforts have been made by the secretariat of the Fund, in coordination with the OHCHR External Outreach Service,

to increase the visibility of the Fund and relay information on the concrete impact it has on the ground. Since January 2014, a number of audio and visual tools have been developed, including informational flyers in all the working languages of the Fund and a dedicated web page illustrating stories of victims rehabilitated with the support of the Fund and featuring a short video on the emergency assistance provided to victims of torture from the Syrian Arab Republic seeking refuge in Lebanon (http://donatenow.ohchr.org/torture). The page also contains a "donate now" button. Regular information on the Fund's financial situation and needs has been shared with Member States, including at a briefing held by the Director of the Human Rights Treaties Division on 2 July 2014. Board members have also provided regular briefings on the Fund to Member State delegations, both bilaterally and in larger meetings.

Contributions and pledges received

10. The table below shows the contributions and pledges received since the previous report of the Secretary-General to the General Assembly on the activities of the Fund (A/68/282). The contributions received since 1 January 2014 will enable the Board to make recommendations for grants to be disbursed for the period from 1 January to 31 December 2015 at its fortieth session, to be held in Geneva from 29 September to 4 October 2014. It should be recalled that, as indicated in *United Nations Human Rights Appeal 2014*, the Fund would need to raise at least $8.2 million in 2014 to make recommendations for grants for 2015.

Contributions and pledges received from 13 July 2013 to 1 July 2014

Donor	*Amount (United States dollars)*	*Date of receipt*
Contributions		
States		
Andorra	12 983	6 September 2013
Andorra	13 755	25 April 2014
Chile	10 000	15 April 2014
Denmark	545 355	5 December 2013
Egypt	10 000	9 July 2014
Finland	370 860	27 September 2013
Germany	547 195	27 March 2014
Holy See	916	14 March 2014
India	25 000	29 October 2013
Ireland	116 918	4 April 2014
Kuwait	10 000	18 February 2014
Morocco	2 000	23 October 2013
Norway	133 466	27 May 2014
Turkey	10 000	30 May 2014
United Arab Emirates	10 000	6 May 2014
United States of America	5 694 000	4 December 2013
Subtotal	**7 485 710**	

Donor	*Amount (United States dollars)*	*Date of receipt*
Private and public donors		
NJCM Nederlands Juristen Comite	4 080	11 March 2014
Individual	135	14 October 2013
European Union ambassadors	1 010	16 September 2013
Subtotal	**5 225**	
Total contributions	**7 490 935**	
Pledges		
Algeria	5 000	11 November 2013
Germany	203 804	30 July 2014
Total pledges	**208 804**	

IV. Thirty-ninth session of the Board of Trustees

11. The thirty-ninth session of the Board was held from 4 to 10 March 2014 and focused principally on policy issues. Following the discussions held during its thirty-seventh session, the Board recommended a sharpened focus and clearer grant-making parameters for the Fund. All recommendations in this regard were approved by the High Commissioner, on behalf of the Secretary-General, on 28 March 2014.

12. In determining the new objectives, the Board availed itself of the comprehensive statistical overview provided by the secretariat on the evolution of the Fund's grant-making since its establishment. It was noted that between 2003 and 2013, the project portfolio of the Fund had grown by 40 per cent in terms of grants awarded per annum, reaching a historical high of 270 projects in 2014, for an average grant size of $26,000. In the light of decreasing available resources, however, the Fund had progressively atomized its grants, with almost 50 per cent of the project portfolio of 2014 consisting of grants of $20,000 or less. Furthermore, it was noted that in 2014 only 10 per cent of the net resources available for grants had been awarded to newly identified projects for direct assistance and to emergency projects, whereas in the same year almost 50 per cent of the resources were invested in projects that had been funded by the Fund on a continuous basis for 11 years and more. Of the net resources available in 2014, 40 per cent are placed in projects based in the countries of the Western European and other States group.

13. The Board hence recommended the progressive introduction, as of 2015, of a case-by-case competitive review of project proposals, based on merit and documented needs, as well as on years of continuous support to the same project. It is expected that through competitiveness and clearer parameters for time-bound support to projects, by 2017 the Fund's project portfolio will be reduced to a manageable number of projects and that the average size of the grants will increase noticeably. The Fund should also progressively aim at a more balanced distribution of projects among the five regions of the world and an increased capacity to respond promptly to the assistance needs of victims of torture in new and emergency human rights situations, thereby adhering more strictly to General Assembly resolution

36/151. The Board also recommended that more resources be set aside to support the capacity-building of new rehabilitation centres, in particular in less developed regions. The Board will cyclically set geographic and thematic priorities, in line with the priorities of OHCHR, other United Nations torture-related mandates and the United Nations.

14. The Board reiterated the need for the Fund to stay true to its unique victim-centred and universal mandate. To do so, the Fund should strive for greater balance between its long-term support to already identified victims and its responsiveness to the plight of victims in new and emergency situations, as has been the case with emergency projects financed since in late 2012 in support of victims of torture fleeing the Syrian Arab Republic.

15. The Board will continue to pursue cooperation with other United Nations torture-related mechanisms. To that effect, during the thirty-ninth session a meeting was held with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, following an exchange of letters with the Chair of the Committee against Torture, a member of the Board attended the fifty-second session of the Committee on 14 May 2014 to exchange information and strengthen synergies. A member of the Committee is in turn expected to meet with the Board during its fortieth session in September 2014.

V. United Nations International Day in Support of Victims of Torture

16. On 26 June 2014, the International Day in Support of Victims of Torture was commemorated with the launch of a dedicated page (http://donatenow.ohchr.org/torture). On that day, statements were issued by the Secretary-General, the High Commissioner and, jointly, by the Committee against Torture, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Special Rapporteur on torture and the Board of Trustees of the Fund for Victims of Torture. In his statement, the Secretary-General recalled that the right of victims of torture to effective remedy, including rehabilitation, had yet to be realized, in particular in the context of armed conflicts and large-scale humanitarian crisis. The Fund is a practical tool of the United Nations to extend prompt assistance to victims of torture and their families and should be supported by States and private donors. The High Commissioner decried the fact that there were hundreds of thousands of victims of torture in every continent across the globe awaiting redress. Although 155 States had ratified the Convention against Torture, acts of torture were tolerated in many countries; furthermore, the obligation of States to ensure that victims of torture and ill-treatment obtain full and effective redress and reparation continued to be systematically neglected worldwide. The burden of rehabilitation was often borne by non-governmental organizations, many of which were supported by the Fund.

VI. How to make a contribution to the Fund

17. Governments, non-governmental organizations and other private or public entities can contribute to the Fund. For more information on how to contribute and further details about the Fund, donors are requested to contact the secretariat of the

United Nations Voluntary Fund for Victims of Torture, Office of the United Nations High Commissioner for Human Rights, United Nations, CH 1211 Geneva 10, Switzerland; e-mail: unvfvt@ohchr.org; telephone: 41 22 917 9624; fax: 41 22 917 9017.

17. Donations can also be made online at http://donatenow.ohchr.org/torture. Information on the Fund can be found at www.ohchr.org/torturefund.

VII. Conclusions and recommendations

19. As stated by the Secretary-General on 26 June 2014, the Fund is a practical tool of the United Nations to extend prompt assistance to victims of torture and their families. It is an integral part of the United Nations work against torture, seeking to provide redress, including rehabilitation, to hundreds of thousands of victims of torture in all regions of the world.

20. Looking ahead, the Fund will strive to achieve a fairer balance in its portfolio of projects so as to be able to better respond to the assistance needs of the greatest number of victims of torture in all regions of the world. The Fund's guidelines have been revised to that effect.

21. The Board estimates that the Fund would need to receive $12 million on a yearly basis in order to respond adequately to the ever-increasing demands for assistance, in particular in the face of today's large-scale human rights crisis and conflicts. A "donate now" webpage was launched on 26 June 2014 (http://donatenow.ohchr.org/torture).

22. The Board stresses that contributing to the Fund is a concrete translation of the commitment of States towards the elimination of torture, in line with the Convention against Torture, in particular its article 14.

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Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Extreme poverty and human rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, submitted in accordance with Human Rights Council resolution 26/3.

* A/69/150.

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Report of the Special Rapporteur on extreme poverty and human rights

Summary

The present report focuses on the implementation of the right to social protection through the adoption by all States of social protection floors. The very widely endorsed Social Protection Floor Initiative aims to guarantee basic income security and access to essential social services for all. In the report, the Special Rapporteur reviews the reasons for the marginality of social protection during most of the twentieth century and then traces the evolution of the concept of social protection floors and notes its defining characteristics. While international organizations have played an important role, social protection initiatives by countries in the global South have also been indispensable catalysts.

In the report, the Special Rapporteur examines the key challenges that must be addressed if the initiative is to be successful. They include overcoming the ambivalence of key international actors, including especially the World Bank, towards the concept; the lack of sufficient legal recognition of social protection as a human right; and misgivings as to the affordability of social protection floors. He argues that the draft produced by the Open Working Group of the General Assembly on Sustainable Development Goals on 19 July 2014 is a considerable disappointment in terms of its approach to both human rights and social protection.

In the report, the Special Rapporteur calls for civil society groups working in the human rights field to engage with the Initiative in a way that has not happened to date and for the World Bank to adopt a new approach that is genuinely supportive of it. He also suggests greater engagement with the Initiative by both the Committee on Economic, Social and Cultural Rights and the special procedures mandate holders. He concludes that universal promotion of the right to social protection, through the adoption of social protection floors and closely related initiatives taken within an overall human rights-based framework, should become a central goal for all actors within the human rights and development contexts. It should be seen not only as an initiative designed to promote economic, social and cultural rights, but also one that has great potential to improve the enjoyment of civil and political rights by hundreds of millions of people worldwide.

I. Introduction

1. The present report is submitted in accordance with Human Rights Council resolution 26/3 and is the first report submitted by the new mandate holder, Philip Alston, who replaced Magdalena Sepúlveda Carmona as the mandate holder on 2 June 2014. In the report the Special Rapporteur looks at social protection floors, with particular emphasis on the relevance of the Social Protection Floor Initiative to the post-2015 development agenda.

2. Implementation of the right to social protection through the adoption by all States of social protection floors is by far the most promising human rights-inspired approach to the global elimination of extreme poverty. In essence, those floors are guarantees of basic income security and access to essential social services for the whole population. No other operational concept has anything like the same potential to ensure that the poorest 15 to 20 per cent of the world's people enjoy at least minimum levels of economic, social and cultural rights.

3. Observers who are not familiar with the origins of the Social Protection Floor Initiative, or with the ways in which the concept has developed, might be tempted to assume that it is just another example of pouring old wine into new bottles in order to package the right to social security in a more attractive way. But the social protect floor is novel and significant for several reasons. First, it achieves a synthesis which gives operational significance to the rights to social security and an adequate standard of living, which had previously languished within the human rights framework. Second, rather than being foisted upon reluctant or resistant States, it reflects a process of reflexive learning between the international policy community and actual practice emerging in and from the global South. Third, instead of assuming a gap or even an incompatibility between human rights norms and economic realities, social protection as a concept has been carefully designed both to take account of affordability and to acknowledge the importance of promoting economic productivity. Fourth, to a greater extent than is the case with any other social human right, the initiative has come largely from outside the human rights field, bringing with it the prospect that a far more broad-based coalition of actors can be mobilized to promote implementation.

A. Social protection at an uncertain crossroads

4. In resolution 25/11, the Human Rights Council acknowledged the importance of the joint United Nations Social Protection Floor Initiative for the realization of economic, social and cultural rights and referred specifically to International Labour Organization (ILO) recommendation No. 202 (2012) concerning national floors of social protection, the instrument that provides the most detailed and systematic elaboration of the concept. The Initiative has been promoted in particular by ILO and the United Nations, along with a wide range of other international agencies, supported by a multitude of international forums and embraced by a strong coalition of civil society groups, especially in the development and social se[illegible]ce sectors. In a statement made on 21 May 2013, a group of 17 special procedures mandate holders recommended that the post-2015 development agenda being elaborated under the auspices of the General Assembly should include a goal on social protection floors, explicitly referencing the right to social security and a human rights-based approach to social protection.

5. Despite that impressive array of support, the Initiative remains today at an uncertain crossroads. Definitions accorded to the concept vary widely, the domestic legal status of the guarantees remains uncertain, its place within the human rights framework is contested and key international actors remain ambivalent in practice, even if not in theory. That is reflected in the current draft of the report of the Open Working Group on Sustainable Development Goals of 19 July 2014, in which the Group endorses a version of the concept that is significantly watered down compared to that advocated by human rights proponents.

6. The essential message of the present report is that universal promotion of the right to social protection, through the adoption of social protection floors and closely related initiatives taken within an overall human rights-based framework, should become a central goal for all actors within the human rights and development contexts. It should be seen not only as an initiative designed to promote economic, social and cultural rights, but also one that has great potential to improve the enjoyment of civil and political rights by hundreds of millions of people worldwide.

B. Extent of the current challenge

7. Despite much-heralded recent achievements in reducing the incidence of extreme poverty, especially in some parts of the world, the magnitude of the challenge remains staggering. According to the United Nations Development Programme *Human Development Report 2014*, over 2.2 billion people, more than 15 per cent of the world's population, "are either near or living in multidimensional poverty." In contrast, in the *Millennium Development Goals Report 2014* "remarkable progress" is hailed, reflecting the fact that between 1990 and 2010 the absolute number of people living in extreme poverty decreased from 1.9 billion to 1.2 billion. Statistics, of course, are what we choose to make of them. Much has been written about how the extreme poverty standard of the World Bank, currently measured as people living on $1.25 a day or less and preferred by those seeking to demonstrate progress towards meeting the Millennium Development Goals, is inadequate for capturing the realities of poverty on the ground. In the first place, the choice of a 1990 baseline for a goal set in 2000 is rather like vowing to eliminate torture and citing the incidence of usage of the rack as the main indicator of success.[1] In explaining why that benchmark dramatically underestimates the actual situation, ATD/Fourth World notes that the measure is too low as it excludes by definition all poverty in developed countries; income surveys rely on often inadequate and flawed data; and household surveys and the like fail to capture many of the very poorest.[2]

8. To overcome those problems, for the *Human Development Report* UNDP uses the Multidimensional Poverty Index, which goes beyond a single indicator of income to reflect multiple deprivations at the household level, including in health, schooling and living conditions.[3] Other United Nations agencies, many scholars and

[1] On the origins of the 1990 baseline, see Mac Darrow, "The Millennium Development Goals: milestones or millstones? Human rights priorities for the post-2015 development agenda", *Yale Human Rights and Development Law Journal*, vol. 15, No. 1 (2012).

[2] ATD/Fourth World, *Challenge 2015: Towards Sustainable Development that Leaves No One Behind* (Paris, Éditions Quart Monde, 2014).

[3] In the *Human Development Report 2014* it is claimed that the "most successful antipoverty and human development initiatives to date have taken a multidimensional approach".

leading non-governmental groups, as well as the Guiding Principles on Extreme Poverty and Human Rights, all opt for the multidimensional approach, which is the one adopted by the Special Rapporteur.

9. However, for the purposes of the present report it is sufficient to focus on the extent to which social protection is currently available worldwide. The most recent analysis of this is contained in an ILO publication, which concludes that 73 per cent of the global population is either not covered at all or is only partially covered by comprehensive social security systems. In following a human life-cycle approach, the authors of the report notes that 75 countries have no child and family benefit programmes mandated by legislation and that the global average spending on such programmes is only 0.4 per cent of GDP. For working-age adults, the comparable figure is 2.3 per cent. While 28 per cent of workers worldwide are eligible for unemployment benefits under existing legislation, only 12 per cent of unemployed workers actually receive such benefits (ranging from 64 per cent in Western Europe to 3 per cent in the Middle East and Africa). Employment injury, disability and maternity benefits are also available on only a very limited basis globally. Forty-eight per cent of people over pensionable age do not receive old-age pensions and, even where some pensions are available, levels are often inadequate. Finally, 39 per cent of the world population lacks health coverage, a figure that rises to 90 per cent in low-income countries.[4]

10. Disaggregating those different elements of the right to social protection reveals clearly how inadequate existing arrangements are and how large a proportion of the global population is not accorded even basic levels of economic and social rights protection.

II. From neglect to centre stage

11. The significance for the human rights system of the emergence of the concept of a social protection floor, and its future prospects, can be fully appreciated only against the background of the history of related efforts during the second half of the twentieth century. The concept is widely recognized as having risen with "meteoric speed" on the international development agenda.[5]

A. Marginality of social protection during the twentieth century

12. Although a report as brief as this can only skim the historical surface, at least five factors ensured that social protection in general, and the right to social security in particular, were of marginal importance for most of the twentieth century. First, the artificial and in some respects arbitrary division of the concept of human rights into two different categories of rights governed by very different assumptions, condemned economic and social rights to second-class status for much of this period. Second, the often proclaimed interdependence and indivisibility of the two sets of rights resolutely failed to address in practice the fact that individuals living

[4] These statistics are all taken from ILO, *World Social Protection Report 2014/15: Building Economic Recovery, Inclusive Development and Social Justice* (Geneva, 2014).

[5] Arjan de Haan. "The rise of social protection in development: progress, pitfalls and politics", *European Journal of Development Research*, vol. 26, No. 3 (2014).

in extreme poverty were unable to realize effectively many of their civil and political rights. Third, the mistaken notion that civil and political rights are largely costless, while economic and social rights are inevitably extremely costly, was used to legitimize the assumption that social security was a quintessentially costly right and thus only really of relevance to rich countries. Fourth, where it was officially accepted, social security was largely conceptualized as a tool for protecting workers in the public sector and in the formal sector more generally. Thus only minimal efforts were made to develop a more inclusive notion that built upon both formal and informal structures and processes to ensure that all persons were covered by some type of security arrangement. Fifth, many of those problems were exacerbated by the impact of the cold war on the human rights framework. A sixth factor was the extent to which individual United Nations agencies claimed different issues as their own and sought to develop forms of exclusive jurisdictional competence. Under that scheme, social security "belonged" to ILO. The rest of the United Nations system thus more or less kept away from the issue, except in the most general terms. That also meant that, some official rhetoric notwithstanding, the United Nations human rights system developed in relative isolation from what should have been the closely related work of a number of the specialized agencies.

B. Emergence of the concept of social protection floors

13. The emergence of the Social Protection Floor Initiative at the international level has been well documented.[6] In telegraphic form, most analyses begin with the harsh adjustment policies associated with the "Washington Consensus" of the 1980s, the reaction to those policies by the United Nations Children's Fund (UNICEF) and other actors, the World Summit for Social Development in 1995, the poverty reduction strategies championed by the World Bank and the International Monetary Fund (IMF), starting in the late 1990s, and the focus on poverty in the Millennium Development Goals. Social security then began to re-emerge as a priority concern, thanks in large part to the engagement of ILO. It launched a global campaign on social security in 2003, followed by the World Commission on the Social Dimension of Globalization in 2004, along with a series of other steps endorsed by the International Labour Conference.

14. Ownership of the concept was subsequently expanded when the United Nations System Chief Executives Board for Coordination endorsed it as one of its responses to the financial crisis in 2008 and in 2010 the Social Protection Floor Advisory Group brought ILO together with the World Health Organization (WHO), with Michelle Bachelet, then Executive Director of the United Nations Entity for Gender Equality and the Empowerment of Women, as Chair. The resulting report in 2011 (commonly known as the Bachelet report)[7] did not add a great deal to earlier ILO iterations of the content, but was very important in broadening both the constituency and political support for the concept, thus facilitating its formal endorsement by the Summit of the Group of 20 in Cannes, France, in the same year. At the same time, the various regional groupings rallied around the concept, as

[6] See, for example, Bob Deacon, *Global Social Policy in the Making: The Foundations of the Social Protection Floor* (Bristol, United Kingdom, Policy Press, 2013) and Julie L. Drolet, *Social Protection and Social Development: International Initiatives* (Springer, 2014).

[7] ILO, Social Protection Floor for a Fair and Inclusive Globalization: Report of the Advisory Group (Geneva, 2011).

illustrated by its embrace by the African Union in the Khartoum Declaration on Social Policy Action towards Social Inclusion (2010), and a range of more specialist statements, such as the recommendations of the African Union expert consultation on children and social protection systems to the fourth session of the Conference of Ministers of Social Development in May 2014.[8] It is noteworthy that, despite reports addressing social protection floors by various special procedures mandate holders, the Human Rights Council did not formally address or endorse the concept until 2014.

15. While tracing the history of the evolution of the concept of social protection floors through the lens of international organizations is a common approach in the literature, it must be observed that it is both surprisingly ahistorical and gives insufficient weight to the political economy that facilitated the evolution of support for it.[9] It is ahistorical especially to the extent that it underestimates the gradual and cumulative ways in which national initiatives, especially in developing countries, created the conditions in which pioneering national programmes could emerge. Those programmes often ran in very different directions from the policies being advocated by the international community. Since the late 1990s, a diverse range of countries in the global South have developed innovative programmes for social protection, which look very different from the more traditional approaches developed in the North.

16. Important initiatives include Bolsa Familia and Brasil Sem Miséria in Brazil, Oportunidades in Mexico, Asignación Universal por Hijo para protección social in Argentina, a social transfer scheme in Zambia, the National Rural Employment Guarantee Scheme in India, the Productive Safety Nets programme in Ethiopia, a universal pension scheme in Namibia and the provision of universal access to basic health services in Thailand. The programme in Brazil has grown from covering 3.6 million families in 2003 to 13.8 million in 2012, while a solidarity-based pension system in Chile went from 560,000 beneficiaries in 2008 to 1.1 million in 2012. In China, the *Di bao* reforms aim to create social insurance and assistance programmes to protect the entire population against economic insecurity and physical infirmity.[10] Overall, there has, as the World Bank observes, been "an exponential growth in social safety nets, especially cash-based programs".[11]

17. Although social protection policies in Latin America still vary considerably, a recent study has identified several common policy characteristics within the region. They include: recognition of the importance of reducing inequalities and realizing social, economic and cultural rights; recognition of the role of the State in correcting market asymmetries; the need to increase and maintain social investment in response to economic crises; the adoption of comprehensive poverty reduction policies; and taking account of disparities based on gender, age and ethnicity.[12]

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[8] See African Union document CAMSD/EXP/3(IV) (2014).

[9] For an excellent synthesis and overview see Francois-Xavier Merrien, "Social protection as development policy: a new international agenda for action", *International Development Policy*, vol. 5, No. 1 (2013).

[10] See Liu Hong and Kristian Kongshøj, "China's welfare reform: an ambiguous road towards a social protection floor", *Global Social Policy*, published online 12 December 2013.

[11] World Bank, *The State of Social Safety Nets 2014* (Washington, D.C., 2014).

[12] See Simone Cecchini, "Social protection, poverty and inequality: a comparative perspective", *Journal of Southeast Asian Economies*, vol. 31, No. 1 (April 2014).

18. In addition to Latin America, where the most innovative and probably the most influential schemes have originated, both African and Asian States have made important progress. In Africa, social protection issues are said to "have gained unprecedented momentum",[13] with the number of countries in sub-Saharan Africa with some form of unconditional cash transfer system going from 21 in 2010 to 37 by 2013.[11] One problem is that some of those systems are very heavily dependent upon external donor financing, thus making them less secure.

19. There have also been many such initiatives in the Asia-Pacific region,[14] as illustrated by the declaration in October 2013 of the Association of Southeast Asian Nations on strengthening social protection that "everyone is entitled to equitable access to social protection, based on a rights-based, needs-based, life-cycle approach and covering essential services as needed". In the declaration member States also committed to strive to extend coverage, availability, quality, equitability and sustainability of social protection and gradually promote it, to ensure optimum benefits.

20. The significance of the fact that so many social protection initiatives have emanated from the South, and that social protection floors have gained such support in developing countries, is all the greater when seen against the earlier resistance by many of those countries to efforts that were considered to involve the undifferentiated and inappropriate transposition of Western approaches to social security.[15] South-South cooperation in this area thus bodes well for the future of the Social Protection Floor Initiative.

C. Defining social protection

21. The generic term "social protection" has been used to describe a wide range of past and present policy approaches. In recent years, however, the main debate has been between those who support what are termed "social safety net" approaches and those who seek "social inclusion" and acknowledge "social citizenship". The principal response of the World Bank to the backlash against the austerity and adjustment policies of the Washington Consensus was to advocate social safety nets. The concept of social risk management gained special prominence, both as a means to protect the basic livelihood of the most vulnerable, or those living in chronic poverty, and to promote better managed risk-taking in response to economic and other shocks. However, the safety net approach was also widely criticized for failing to devote enough attention to structural poverty and inequality, and for its emphasis on the narrow targeting of groups for assistance. In response, rights-based approaches were promoted, not only within the human rights community, but by a broader range of development scholars and institutions.[9] But the general debate is far from settled and critics argue that many of today's approaches to social

[13] Stephen Devereux and Melese Getu, eds., *Informal and Formal Social Protection Systems in Sub-Saharan Africa* (Addis Ababa, Organization for Social Science Research in Eastern and Southern Africa and Fountain Publishers, 2013).

[14] See, for example, United Nations Development Group, Asia-Pacific social protection issues brief (2014) and Asian Development Bank, *The Social Protection Index: Assessing Results for Asia and the Pacific* (Manila, 2013).

[15] Robert Cox, "Gramsci, hegemony and international relations: an essay in method", *Millennium — Journal of International Studies*, vol. 12, No. 2 (1983) and Bob Deacon, *Global Social Policy and Governance* (2007).

protection continue to show a "bias towards more ameliorative and less transformative approaches to social protection, which are likely to leave the underlying causes of injustice in place."[16]

22. Even within the same country, competing conceptions of social protection might coexist. In Mexico, for example, scholars have suggested that while approach of the federal Government emphasizes targeting and good behaviour by the beneficiaries in order for conditional cash transfers to occur, the policies adopted in the federal district of Mexico City attach greater importance to inclusiveness, democratic content and social citizenship.[17]

23. At the international level, definitional issues continue to be controversial, especially in terms of whether social protection floors should be seen as a matter of human rights and whether they should be universal and unconditional. Before examining those dimensions, it is appropriate to take note of the approach reflected in ILO recommendation No. 202. As the culmination of many initiatives, both within and well beyond the ILO context, it has become the principal benchmark against which social protection floors should be designed, implemented and evaluated. The main elements of recommendation No. 202 are as follows:

(a) The recommendation rests on a strong foundation of international human rights law, which is relatively unusual for ILO instruments. In addition to specific references to various provisions of the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, it calls upon States to respect "the rights and dignity of people covered by the social security guarantees";

(b) Social protection floors are nationally defined, in a participatory manner, and reflect national priorities while respecting principles such as non-discrimination, gender equality and social inclusion;

(c) Protection is to be universal, rather than selective and is to be aimed at "preventing or alleviating poverty, vulnerability and social exclusion";

(d) Social protection floors should include at least basic social security guarantees for health care and also for income security for children, older persons and those unable to work, in particular in cases of sickness, unemployment, maternity, and disability;

(e) The basic guarantees should be established by law;

(f) Implementation should be monitored regularly and periodically evaluated;

(g) While social protection floors should be financed by national resources, international support should be available when needed.

[16] Sam Hickey, "Relocating social protection within a radical project of social justice", *European Journal of Development Research*, vol. 26, No. 3 (2014).

[17] Lucy Luccisano and Laura Macdonald, "Mexico and social provision by the Federal Government and the Federal District: obstacles and openings to a social protection floor", *Global Social Policy*, published online 4 July 2014.

D. Universal health-care dimension

24. The health-care guarantees of social protection floors have been greatly reinforced by a separate but closely linked initiative emerging from WHO to promote universal health coverage.[18] That concept has been defined in a way that makes it directly compatible with and complementary to the Social Protection Floor Initiative[19] and was endorsed by the General Assembly in resolution 67/81. In elaborating on this concept, the World Health Assembly has consistently made reference to the right to health, underlined the centrality of universal health care in the post-2015 agenda and emphasized the "the importance of accountability through regular assessment of progress".[20]

III. Key challenges

A. Overcoming the ambivalence of key international actors

25. Scholars have argued that for both ILO and the World Bank, the social protection floor is closely linked to the objectives that inspired the drafters of the respective mandates they were given at the end of the Second World War. For the Bank, the Bretton Woods negotiations in 1944 are said to have been motivated in part by commitments to freedom from want and promoting social security,[21] while the Declaration of Philadelphia of 1944 committed ILO to contribute to the achievement of extended "social security measures to provide a basic income to all in need of such protection and comprehensive medical care". However, the harmony implied by this historical perspective is quickly dispelled by detailed accounts of competition and non-cooperation between the two agencies. Various authors have described how, over the past couple of decades, there has been a "fundamental clash of approaches, ideologies and policies" between the ILO Social Security Department (now the Social Protection Department) and the Social Protection and Labor Division of the World Bank. Those conflicts have played out especially "in the fields of pension policy, of safety net versus universal cash benefits policies, [and] of even the definitions and purposes of social protection".[22]

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[18] See Xenia Scheil-Adlung, "Revisiting policies to achieve progress towards universal health coverage in low-income countries: realizing the pay-offs of national social protection floors", *International Social Security Review*, vol. 66, No. 3-4 (July-December 2013).

[19] See World Health Assembly resolution WHA67.14, ninth preambular paragraph.

[20] See WHA67.14, paras. 8 and 9. See also the Recife Political Declaration on Human Resources for Health: renewed commitments towards universal health coverage WHO document EB134/55, annex.

[21] Eric Helleiner, "Back to the future? The social protection floor of Bretton Woods", *Global Social Policy*, published online 12 December 2014.

[22] Bob Deacon, "The social protection floor and global social governance: towards policy synergy and cooperation between international organizations", *International Social Security Review*, vol. 66, No. 3-4 (July-December 2013). See also Timo Voipio, *From Poverty Economics to Global Social Policy: A Sociology of Aid for Poverty Reduction* (Tampere, University of Eastern Finland, 2011).

26. The report of the Social Protection Floor Advisory Group was especially critical of the Bank's approach and its critiques are still largely pertinent today. In the report, the Advisory Group noted that:

> In the social safety net approach, social policies were considered as residual to economic development. The implementation of such measures was driven by the need to provide relief to the poor and vulnerable during structural reform by cushioning the effects of the structural adjustments and facilitating political support to them. These measures were generally temporary, fragmented and targeted to the poor and vulnerable in a needs-based framework.

27. In an effort to bridge the gap, the Advisory Group urged the Bank to cooperate with ILO and the United Nations on the Social Protection Floor Initiative. The Bank was initially responsive and its major strategy document in 2012 proclaimed an "emerging global consensus" in this area, noting that its "strategy and engagement" were consistent with the "core principles" of the Initiative.[23] Although that was considered to be a significant development, the strategy itself demonstrated rather little substantive engagement with the Initiative. In 2014, the Bank issued the first in what was described as a series of major reports on social safety nets, thus making clear where its future work would continue to focus.[11] The report appeared simultaneously with the new ILO flagship report on social protection floors and, while situating safety nets within what it calls the broader context of social protection, the word "floor" does not appear even once, let alone "social protection floor".

28. While the Bank has participated in the deliberations of the Social Protection Inter-Agency Cooperation Board, recent developments appear to confirm that it is doing so very largely on its own terms, built around risk management and safety nets, and remains reluctant to buy in to the Social Protection Floor Initiative in a meaningful way. Its response to that remark would doubtless be to point to the fact that 870 million of the 1.2 billion people living in extreme poverty, as defined by the Bank, are not covered even by safety nets.[11] Under those circumstances, surely it is only prudent to begin with minimum aspirations? However, the Initiative envisages a gradual ratcheting up of aspirations, rather than the immediate introduction of full-blown social protection floors in low- or medium-income countries.

29. The position of the Bank seems rather to be driven by its long-standing resistance to the notion that it can advocate respect for human rights without becoming "political"; its preference for formulae that can be overseen by economists and administrators, rather than empowering the population; a deep-seated resistance to universal coverage in the absence of a great many caveats or safeguards to prevent abuse; and an aversion to the sort of legal entrenchment of a right to social protection that would constrain the options of economic policymakers.

30. The consequences of that approach in relation to the Initiative are enormous. First, it means that complex systems for selectivity will trump aspirations to achieve universal coverage. Second, the level of protection that is set will remain extremely low. The Bank's own figures indicate that while the poorest 20 per cent of households

[23] *The World Bank 2012-2022 Social Protection and Labor Strategy: Resilience, Equity and Opportunity* (Washington, D.C., 2012).

account for 25 per cent of all spending on safety nets, the resulting transfers make up only 23 per cent of the income or consumption of a poor household. Third, social safety nets are generally not protected by law and the poorest are thus left highly vulnerable to changing policy winds. Fourth, the human rights dimension is effectively eliminated. Social protection remains a charitable undertaking, advocated for reasons of efficiency and productivity, and not a matter of right. The empowerment dimension is thus lost, as is the rest of the rights-based framework. Finally, over time, the Initiative will gradually be marginalized and its momentum destroyed. As noted below, especially for low-income countries, affordability is the crucial issue and the United Nations, along with agencies such as ILO, WHO and UNICEF, for all their eagerness to assist and advise, can only go so far in that regard. Ultimately, the World Bank and the IMF need to support proposals to create the fiscal space necessary for social protection floors to be adopted in many countries and if that support is absent, the overall initiative will be undermined.

31. It must also be acknowledged that even within the United Nations family, there are significant differences in approach. A recent report on social protection floors by the United Nations Development Group explicitly acknowledged such differences and sought to downplay the consequences. It began by acknowledging that social protection occupies different positions within United Nations organizations' mandates and agendas, resulting in "different working definitions and components" being used. But it went on to note, reassuringly and in terms similar to those used by the World Bank, that United Nations organizations nevertheless "have much in common in terms of the desired objectives, principles, and approaches to social protection".[24]

32. A good example of this is the approach adopted in the *Human Development Report 2014*. While the report focuses on the need to reduce vulnerability and build resilience, much of its thrust is to support universal social protection. Thus, it explicitly "calls for universal access to basic social services ... stronger social protection ... and a commitment to full employment ...". But while the Social Protection Floor Initiative is mentioned a couple of times, it is by no means central to the analysis. Even more significantly, the report avoids, to the extent possible, the use of the term "human rights". The first mention of the phrase is a quote from Pope Francis on page 14; the next is on page 74 in a reference to "women's human rights". Rather than using language that links in any way to specific human rights, or to obligations assumed by States, the report makes extensive use of generic terms that give the illusion of referring to human rights but are not in fact grounded in any particular content. Thus, there are references to "needs and rights", "rights and services", "interests and rights", "rights and choices", "basic rights", and "intrinsic rights". It is only in a final discussion, towards the end of the report, on "elements of a global social contract", that reference is made to various human rights treaties.

B. Ensuring the linkage between social protection and human rights

33. The Social Protection Floor Initiative is not merely relevant to human rights; it is firmly rooted within the rights framework. In its report, the Social Protection Floor Advisory Group described the basic concept as being anchored in shared principles of social justice and in the human rights to social security and to an

[24] United Nations Development Group Asia-Pacific, social protection issues brief.

adequate standard of living.[7] In terms of legal foundations, it added that: "The right of individuals to provision by way of social protection is articulated specifically in a number of international instruments, notably the Universal Declaration of Human Rights and the International Covenant on Economic, Cultural and Social Rights."[7] ILO recommendation No. 202 is very specific in "reaffirming that the right to social security is a human right" and in underscoring the relevance of articles 22 and 25 of the Declaration and articles 9, 11, and 12 of the Covenant.

A new human right?

34. The fact that none of these instruments refers per se to a "right to social protection" raises the question as to whether it should be considered an existing human right, or a new one. In the past, States have understandably been very sensitive about claims that new rights have emerged without requiring specific endorsement by the international community. In this instance, the standard approach of commentators is best summed up in the formulation that: "Social protection is a human right, enshrined in multiple sources of international law."[25] In other words, no claims are needed for novelty, nor is it necessary to argue that the whole is more than the sum of the parts. The right to social protection is thus no more than a combination of the right to social security and the right to an adequate standard of living. Nevertheless, the packaging of those two rights into a single concept is important, both because it highlights the synergy between them and facilitates the development of a package of measures to achieve their shared objectives.

Indivisibility

35. The second important point of linkage is that social protection as a human right is thus an integral part of the overall package of human rights that includes civil and political rights, the effective exercise of which is also going to be crucial to achieving the right to social protection.

Congruence with the International Covenant on Economic, Social and Cultural Rights

36. Another dimension which is of considerable importance, especially in making the case to those who are involved in implementing and monitoring the International Covenant on Economic, Social and Cultural Rights, is the extent to which the approach embodied in the Social Protection Floor Initiative mirrors that adopted in relation to the Covenant. Four examples will suffice: first, progressive realization is the standard set in the Covenant and is also the approach adopted by the proponents of the Initiative. As one proponent of the latter has noted "the case for universalism needs to be framed in ways that do not set up false dichotomies or unrealistic expectations."[26]

37. Second, the means by which economic and social rights are to be realized needs to be highly sensitive to national specificities: just as proponents of the Covenant have recognized that dimension, so too is the Initiative built upon

[25] Olivier de Schutter and Magdalena Sepúlveda, "Underwriting the poor: a global fund for social protection", briefing note (October 2012).

[26] Naila Kabeer, "The politics and practicalities of universalism: towards a citizen-centred perspective on social protection", *European Journal of Development Research*, vol. 26 (July 2014).

assumptions of national ownership. By the same token, there have been compelling arguments made for the need to pay much more attention in future to local or indigenous mutual support systems and institutions in the area of social protection.[13]

38. Third, the Initiative, as reflected in ILO recommendation No. 202 closely mirrors the view expressed by the Committee on Economic, Social and Cultural Rights in its general comment No. 3 (1990) on the nature of States parties' obligations that "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party." While the minimum core concept has been developed primarily at the national level in the context of judicial approaches, the original intention of the Committee was that a minimum core would be set at the national level by the political authorities and its adequacy would subsequently be subjected to political contestation through the exercise of civil and political rights by those affected.

39. Finally, much has been made in the context of the Covenant of the importance of establishing benchmarks against which governmental performance can be evaluated. As the United Nations Development Group has observed, the immediate realization of a social protection floor is not a realistic policy goal for most countries in the region, but progress can be achieved through "setting a benchmark for the benefit levels. The benchmark may be taken as the national poverty line for tax-financed, universal schemes and relative benchmarks as laid out in the ILO's social security Conventions."[24]

Legal recognition

40. Just as human rights require recognition by law, so too has the Social Protection Floor Initiative emphasized the importance of entrenching the social protection right in national laws and regulations.[27] That dimension has been well captured by the United Nations Development Group:

> Obligations and entitlements to social protection benefits should be specified in a precise manner, so as to clearly delineate the rights and duties of residents and contributors. To ensure the predictability and sustainability of social protection provisions, laws and regulations should be designed and enforced to support all social protection schemes and services.[24]

41. In the same section of the report, the Group laments the fact that "in many countries ... social protection benefits have been provided for several years without having a legal basis."[24]

C. Affordability

42. Social security and social protection have long been dismissed as unaffordable aspirations, particularly in low-income countries. One of the major contributions of the Initiative is that it has addressed in extensive detail the ways in which all countries can potentially afford to put such a programme in place. The most recent and extensive treatment of this issue is contained in the ILO *World Social Protection*

[27] See Gerard W. Boychuk, "Social protection guarantees as legal rights? The International Labour Organization, the United States and the American 'national context'", *Global Social Policy*, published online 6 June 2014.

Report 2014/15 and it is not proposed to repeat or challenge that analysis here.[28] It must suffice to say that affordability is certainly crucial to the prospects of success of the Initiative and that the lengths to which its proponents have gone to demonstrate that dimension is impressive.

43. Proponents of the Initiative have also attached great weight to instrumentalist arguments that suggest a compelling economic pay-off from social protection. The United Nations Development Group, for example, has argued that social protection "is essentially an investment in human capital, which will contribute to greater labour productivity and pro-poor economic growth in the long run"[24] and in the *Human Development Report 2014* the authors have noted that "by providing an additional and predictable layer of support, social protection programmes help households avoid selling off assets, taking children out of school or postponing necessary medical care, all detrimental to their long term well-being."

44. However, the relationship between instrumentalist arguments of that sort and normative arguments that invoke treaty obligations is a matter of contention in the human rights literature.[29] Human rights purists are reluctant to have much to do with instrumentalist arguments which seek to demonstrate that a pro-human rights policy can bring a pay-off, whether in terms of productivity, efficiency, or even social cohesion. The understandable fear is that in the absence of proof that there will be a pay-off, it might then seem justified and legitimate to reject the rights approach. If such a calculus is unacceptable in relation to torture, why should it be entertained in relation to the right to social protection? However, it is also important to acknowledge that instrumentalist arguments are almost always present, whether the debate is over torture, privacy, freedom of assembly, or the right to food. Politicians and the general public cannot be relied upon simply to do the right thing regardless of perceived costs and benefits and so it is entirely appropriate to reinforce moral or normative positions by arguing that they can also bring pay-offs in other respects. It is as well to remember that the classic arguments on behalf of social security invoked in radically different contexts by Bismarck, Franklin Roosevelt and Beveridge all had ulterior motives of one kind or another.[26]

D. Post-2015 development agenda

45. For the past several years, the international community has been heavily focused on, and invested in, the process of drafting development goals for the post-2015 development agenda. On 19 July 2014, the Open Working Group on Sustainable Development Goals released its proposals. For all the immense time and energy expended by proponents of both human rights and the Social Protection

[28] For additional scholarly analyses see Jessica Hagen-Zanker and Anna McCord, "The affordability of social protection in the light of international spending commitments", *Development Policy Review*, vol. 31, No. 4 (July 2013); Mukul G. Asher and Azad S. Bali, "Financing social protection in developing Asia: issues and options", *Journal of Southeast Asian Economies*, vol. 31, No. 1 (April 2014); and Elliott Harris, "Financing social protection floors: considerations of fiscal space", *International Social Security Review*, vol. 66, No. 3-4 (July-December 2013).

[29] See, for example, Malcolm Langford, "Social security and children: testing the boundaries of human rights and economics", in *Freedom from Poverty as a Human Right: Economic Perspectives*, Stephen Marks, Bård Anders Andrassen and Arjun Sengupta, eds. (Paris, UNESCO Publishing, 2009).

Floor Initiative, the results to date are stunningly meagre. Human rights as such have been thoroughly marginalized. There is a token nod in their direction in paragraph 7 of the draft outcome document of the Open Working Group, although rather than underlining their relevance to development, the paragraph merely records the fact that in the outcome document of the United Nations Conference on Sustainable Development, "The future we want", adopted by the General Assembly in resolution 66/288, "the importance of freedom, peace and security, respect for all human rights, including the right to development and the right to an adequate standard of living, including the right to food and water, the rule of law, good governance, gender equality, women's empowerment and the overall commitment to just and democratic societies for development" were reaffirmed, as was the importance of the Universal Declaration of Human Rights. There is only one other reference to human rights in the entire 21-page draft and that appears in the context of a list of issues to which "quality education" should be devoted.

46. Human rights proponents seeking to defend the draft might argue that issues such as non-discrimination and equality are reflected in it and that specific goals such as making "free, equitable and quality" education available to all and achieving "universal and equitable access to safe and affordable drinking water for all" can act as surrogates for the recognition of the respective rights. As argued above, however, recognition of rights empowers all individuals, imposes real obligations on Governments and brings with it an agreed framework for implementation.

47. Poverty eradication, by contrast, is an important focus. The draft proclaims that: "Poverty eradication is the greatest global challenge facing the world today" and accordingly Goal 1 is "to end poverty in all its forms everywhere." The specifics that follow, however, leave much to be desired. Proponents of the Social Protection Floor Initiative can take some consolation from the fact that social protection is mentioned three times. It is identified as a means by which to recognize and value unpaid care and domestic work (target 5.4) and is proposed as a means of promoting greater equality, along with fiscal and wage policies (target 10.4). The main provision of relevance calls upon States to "implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable" (target 1.3). That is a mixed bag. The fact that the social protection measures called for are "for all" implies universality and the fact that "floors" are listed as one means by which this might be achieved is a nod in the direction of the Initiative. However, the draft clearly avoids giving any specific endorsement to the Initiative and says nothing about minimum guarantees, legal entrenchment or rights and the goal set to be achieved over a period of 15 years is determinedly vague and open-ended. In short, it is far more consistent with the social safety net philosophy than with the social inclusion and rights-based approach of the Initiative.

48. This reading is reinforced by the fact that the earlier provisions of Goal 1 seek to resolve the competition between the two ways of measuring poverty by endorsing both, but in very different terms. Target 1.1 follows the World Bank by calling for the eradication, by 2030, of "extreme poverty for all people everywhere, currently measured as people living on less than $1.25 a day". Given that this is a very low standard, the aspiration is a limited one. But when it comes to "men, women and children of all ages living in poverty in all its dimensions according to national definitions", the aim in target 1.2 is only to "reduce at least by half the proportion" by 2030. In other words, that target implies acceptance that as many as half of those

currently living in extreme poverty, as measured by the multidimensional approach described above, will continue to do so beyond 2030. For a planet with immense wealth and one that is able to mobilize vast resources very rapidly for projects that further the interests of the elites, that is a shameful goal and one that is clearly inconsistent with the recognition that all persons are entitled to at least the minimum core of economic and social rights.

49. Finally, the draft omits earlier proposals to establish regular monitoring and reporting arrangements to assess the progress on meeting the sustainable development goals. Target 16.6, which calls for the development of "effective, accountable and transparent institutions at all levels" is a poor substitute for tangible accountability commitments.

IV. Conclusion

50. **Future advocacy for social protection floors needs to acknowledge the lessons that are to be learned from past experience. First, the reality is that in many states the political will to eliminate poverty is lacking and, in the absence of a major change in priorities, the situation will at best improve only incrementally. Far from being a tragedy about which nothing can be done because of financial constraints, the persistence of extreme poverty is the result of a series of deliberate and conscious decisions by key actors who have chosen to prioritize other goals. Those living in poverty have been largely disempowered and their economic position reflects their political marginality. Extreme poverty remains a scourge which the international community has lamented at great length and with a collective gnashing of teeth, but that same community has all too often refused to take the measures required to eliminate the problem. Embracing the Social Protection Floor Initiative would constitute a compelling change of course and mark a genuinely new beginning in the struggle against extreme poverty.**

51. **Second, an indispensable step is to insist on explicit recognition by key actors that there is a human right to social protection. At present, the right to social security and the right to an adequate standard of living, proclaimed so proudly in the Universal Declaration of Human Rights and subsequently often reaffirmed in binding treaty obligations, are ignored or even challenged by the policies advocated by many of the key actors involved in addressing the plight of the hundreds of millions of persons living in extreme poverty. Many leading international organizations and financial institutions still avoid recognizing those rights in their policies and programmes.**

52. **Third, technocratic solutions, no matter how innovative and data-driven, will not work unless they are genuinely empowering of those whom they purport to help.**[30] **In that regard, extreme poverty is a classic case study in the centrality of human dignity as a guiding principle of human rights. The poor,**

[30] "Much of the existing literature on the SPF, largely emanating from international organizations, is apolitical and technocratic, and ignores the vital role played by party politics and ideology and by mechanisms of political conditionality/clientelism in the provision of social programs." Lucy Luccisano and Laura Macdonald, "Mexico and social provision by the Federal Government and the Federal District: obstacles and openings to a social protection floor", *Global Social Policy*, published online 4 July 2014.

we have too often been told by our politicians and others, are usually to blame for their own plight, whether because of laziness, incompetence, mendacity, or whatever. Those unjustified stereotypes provide yet another justification for preferring technocratic approaches through which we measure the poor and work out how we are going to make minimal provision for them, at least in the long term. As Keynes reminded us, in the long term we are all dead. Those living in extreme poverty will be dead even more quickly, so that long-term solutions may be little more than an illusion. Short-term empowerment and respect are what is needed. We need to reassert a common humanity, shared responsibilities and the centrality of human dignity.

V. Recommendations

A. Mobilization to promote social protection floors

53. **International civil society groups should mobilize effectively and in coalition with groups in other sectors to advocate and promote the Social Protection Floor Initiative. While the Center for Economic and Social Rights joined with a range of other groups, including Amnesty International, to call for a commitment to social protection floors in the sustainable development goals,[31] the great majority of international human rights groups have said little and done less on the issue. It is essential to acknowledge that extreme poverty, which continues to afflict hundreds of millions of people, is a negation of all human rights. International civil society groups in the human rights field fight valiantly to eliminate torture, to reduce and expose extrajudicial executions, to reduce violence against women, to outlaw discrimination and the oppression of minorities and so on, but if the elimination of extreme poverty is not a central part of the collective human rights vision, it is a highly selective battle that is being fought.**

54. **The situation is made worse by the fact that some of the leading international human rights non-governmental organizations insist that resource distribution is a matter they cannot address. That position makes meaningful action to eliminate extreme poverty almost impossible and thus largely entrenches the status quo. Policies premised on the assumption that effective poverty elimination strategies need not involve resource redistribution are at odds with empirical realities.**

55. **The leading human rights groups should thus engage actively with the Coalition for a Social Protection Floor,[32] as well as taking their own targeted initiatives.**

56. **Advocacy at the national level is also essential. If a lowest common denominator approach continues to prevail at the international level, civil society actors and others need to concentrate their efforts more at the national**

[31] Center for Economic and Social Rights and others, "OWG inches closer to human rights for all post-2015, but still a long road ahead", joint statement, 30 April 2014, available from http://cesr.org/article.php?id=1582.

[32] See generally Wouter van Ginneken, "Civil society and the social protection floor", *International Social Security Review*, vol. 66, No. 3-4 (July-December 2013).

level. That means advocacy in relation both to national social protection policies and to national policy vis-à-vis the international agenda in the field.

57. **In particular, civil society should engage actively in debates over affordability at the national level. In that context, it is pertinent to recall the highly relevant report by the previous Special Rapporteur on the key role played by fiscal and related policies at the national level in terms of generating the resources necessary for poverty reduction and the realization of human rights (A/HRC/26/28).**[33]

B. World Bank

58. **The role of the World Bank in relation to the Social Protection Floor Initiative is crucial. Based on policies pursued to date, it is the single actor most likely to undermine and frustrate the overall Initiative. Unless there is a change of heart on its part, the development community will continue to be pushed to focus on ill-defined social safety nets aimed at a limited number of the extreme poor and as a matter of bureaucratically defined and designed welfare policy, rather than as a matter of human rights. It is therefore indispensable that the human rights community should shine a spotlight on the policies and practices of the Bank in this area and the Human Rights Council should call upon it to embrace the Initiative in all its dimensions.**

C. Sustainable development goals

59. **In the realms of human rights and the Initiative, the current draft of the post-2015 agenda is a considerable disappointment. The almost complete omission of substantive references to human rights in the draft is a throwback to the United Nations development decade strategies of the 1960s and 1970s. However, they were drafted at a time when the human rights framework was in its infancy and development was seen largely as a technocratic process.**[34] **Similarly, the very low standards set in relation to social protection are inconsistent with the high-flown rhetoric of ending poverty in all its forms everywhere. As it stands, the first goal proposed by the Open Working Group on Sustainable Development Goals might be considered to be in violation of deceptive advertising laws designed to protect consumers.**

60. **It is understandable that some of those who have expended great energy on the post-2015 process should consider that only a token reference to human rights and a weak endorsement of social protection are better than nothing and that they will somehow be able over time to put a positive gloss on determinedly lacklustre goals. This is surely not enough. Civil society groups should make clear that a 1960s approach is no longer acceptable in the twenty-first century. Human rights in general should be recognized as both a central goal of sustainable development and a crucial part of the relevant process and a**

[33] See also Center for Economic and Social Rights and Christian Aid, "A post-2015 fiscal revolution: human rights policy brief" (2014).

[34] See William Easterly, *The Tyranny of Experts: Economists, Dictators and the Forgotten Rights of the Poor* (New York, Basic Books, 2014).

specific right to social protection, as defined in the Social Protection Floor Initiative and ILO recommendation No. 202, should be recognized.

D. Committee on Economic, Social and Cultural Rights and the special procedures mandate holders

61. **One of the most prominent proponents of social protection floors and a principal drafter of ILO recommendation No. 202 has called for the drafting of a "United Nations convention on national floors for social protection," on the grounds that this would "create a much more durable instrument than development goals that have to be revised every few decades".[35] While appealing on the face of it, the proposal will certainly fall foul of the clearly demonstrated leeriness of States about creating new human rights treaties. More importantly, it takes insufficient account of the role currently and potentially played by the International Covenant on Economic, Social and Cultural Rights and the treaty body monitoring its implementation.[36] An alternative therefore would be to propose the drafting of an optional protocol to the Covenant. However, aside from the cost and time involved in such an initiative, there is a strong general argument that new instruments should not risk making optional what is already mandatory — in this case the right to social protection under the Covenant.**

62. **Many of the benefits of a new convention or protocol could be achieved immediately through appropriate action on the part of the Committee on Economic, Social and Cultural Rights. It has already made an important contribution through its adoption in of general comment No. 19 (2007) on the right to social security. The content and assumptions of that general comment are entirely compatible with the Social Protection Floor Initiative, but it was adopted long before the concept of social protection floors was taken up at the international level. Thus, it does not build on the concept of social protection as such, does not use the terminology of "floors" and of course makes no reference to ILO recommendation No. 202 or other important recent developments. The Committee should give careful consideration to adopting an approach which would give much greater prominence in its work to the right to social protection. This should involve much more than just a formal statement and should include the adaptation of its methods of work so that one of its principal focuses is on the steps taken at the national level by each State party to the Covenant to establish a social protection floor. The Committee could also set up a working group to monitor progress in relation to social protection floors and to facilitate a more interactive and participatory process to enable it to make a major contribution to the international campaign to establish universal social protection.**

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[35] Michael Cichon, "The social protection floors recommendation, 2012 (No. 202): can a six-page document change the course of social history?" *International Social Security Review*, vol. 66, No. 3-4 (July-December 2013).

[36] Cichon's downplaying of the potential of the Covenant is presumably linked to his view that "ILO standards in social security … are the only existing — albeit soft — instruments of global social governance …". Ibid.

63. **The Social Protection Floor Initiative should also be a focus of attention for many of the special procedures mandate holders dealing with relevant issues. The initiative is of particular importance for those concerned with the rights of children, women, persons with disabilities, older persons and others.**

E. International funding initiatives

64. **International support, especially for low-income countries, seeking to develop social protection floors is essential. In 2012, two special rapporteurs put forward an important proposal for the creation of a global fund for social protection.[25] That is a sophisticated and carefully calibrated proposal, which has garnered significant attention at the international level. It seems clear, however, that further reflection is required in order to ensure that the focus and the proposed modalities of the fund are optimal and acceptable to key actors. The Social Protection Inter-Agency Cooperation Board should consider establishing an expert group to review the proposal and to recommend an initiative designed to achieve the objectives identified.**